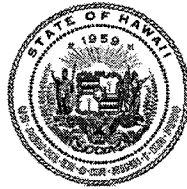


HB 3410 HD2

LINDA LINGLE
GOVERNOR

JAMES R. AIONA, JR.
LT. GOVERNOR



KURT KAWAFUCHI
DIRECTOR OF TAXATION

SANDRA L. YAHIRO
DEPUTY DIRECTOR

STATE OF HAWAII
DEPARTMENT OF TAXATION
P.O. BOX 259
HONOLULU, HAWAII 96809

PHONE NO: (808) 587-1510
FAX NO: (808) 587-1560

**SENATE COMMITTEES ON ENERGY & ENVIRONMENT AND
AGRICULTURE & HAWAIIAN AFFAIRS**

**TESTIMONY REGARDING HB 3410 HD 2
RELATING TO BIODIESEL**

TESTIFIER: KURT KAWAFUCHI, DIRECTOR OF TAXATION (OR DESIGNEE)

DATE: MARCH 11, 2008

TIME: 2:15PM

ROOM: 414

This legislation, among other things, provides various incentives to encourage the biodiesel industry in Hawaii, including amendments to Section 235-7, Hawaii Revised Statutes, to provide an income tax exemption for income derived from the operation of an oil seed crushing facility.

The Committees on Energy & Environmental Protection, Water, Land, Ocean Resources & Hawaiian Affairs, and Agriculture, amended the measure in various ways, including eliminating the real property tax exemption and by clarifying definitions for the income tax exclusion.

The Committee on Finance made technical, nonsubstantive amendments to the bill and amended its effective date.

The House of Representatives passed this measure on third reading.

The Department of Taxation (Department) **supports the intent** of this legislation at this time, as all prior technical concerns were addressed.

The Department is of the position that stimulating the biodiesel industry is a viable means of minimizing Hawaii's dependency on foreign oil. This bill serves as another step in the right direction for minimizing Hawaii's dependence on fossil fuels.

This bill will result in an indeterminate revenue loss. The Department points out that this legislation has not been factored into the Executive Budget and is outside the executive priorities for tax relief this legislation session.

LINDA LINGLE
Governor



SANDRA LEE KUNIMOTO
Chairperson, Board of Agriculture

DUANE K. OKAMOTO
Deputy to the Chairperson

State of Hawaii
DEPARTMENT OF AGRICULTURE
1428 South King Street
Honolulu, Hawaii 96814-2512

TESTIMONY OF SANDRA LEE KUNIMOTO
CHAIRPERSON, BOARD OF AGRICULTURE

BEFORE THE SENATE COMMITTEES ON ENERGY AND ENVIRONMENT
AND
AGRICULTURE AND HAWAIIAN AFFAIRS
TUESDAY, MARCH 11, 2008
2:15 pm
Room 414

HOUSE BILL NO. 3410, HOUSE DRAFT 2
RELATING TO BIODIESEL

Chairpersons Menor and Tokuda and Members of the Committees:

Thank you for the opportunity to testify on House Bill No. 3410, H.D. 2. We are strongly opposed to Part II, (b) (1,2,3) which directs the Hawaii Department of Agriculture (HDOA) to purchase biodiesel feedstock and biodiesel fuel, and to determine its disposition.

In 2006, the Rocky Mountain Institute (RMI) prepared a briefing book for the Department of Business, Economic Development and Tourism on biofuel and biodiesel production in Hawaii and identified a target of 14.2 million gallons of biodiesel to be produced by 2020. Depending upon the crop, this target could require between 55 million-114 million pounds of biodiesel feedstock per year by 2020. HDOA would require significant funding to purchase the crop and CIP funds to build storage facilities as well as personnel with expertise in fuel trading and processing to negotiate a contract with a processor of the feedstock. Or HDOA would need to broker the crop to a processor so HDOA does not take physical delivery of the crop. In either case, HDOA does not have the specialized personnel or funds to carry out these transactions and its involvement only adds cost and time. HDOA would also have to have access to

feedstock producers' cost of production records to determine the offering price. This is likely to vary from producer to producer and will require additional accounting staff.

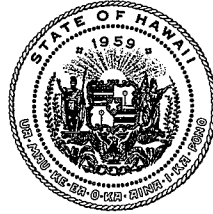
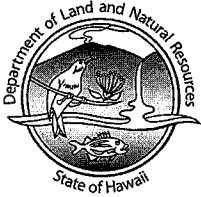
Transportation is another issue. Is there sufficient carrier and port capacity to transport Neighbor Island feedstock to the storage or processing site? Who will pay for the transportation cost? HDOA or the feedstock producer? What will happen if HDOA cannot find a processor for the feedstock at a price that covers the cost of purchase, transportation, storage and overhead?

Similar problems arise if HDOA is required to purchase biodiesel fuel offered at a "fair and reasonable price". What if HDOA and the in-state processor(s) cannot agree on a price? HDOA will be at a severe disadvantage if the processor(s) knows that HDOA does not have an alternate buyer. Unless the processor is prepared to open up their accounting and production records, it will be impossible to determine what is a "fair and reasonable price." The problems of storage, transportation, and end use are also not addressed in the bill.

The private sector brings specialized skills and far more technical resources than the State, and can better assess the risks, make the necessary investments, and if their analysis is correct, reap the rewards. We strongly believe that the private sector is best positioned to assume the responsibilities proposed for HDOA in (b)(1,2,3).

We would also like to offer the comment that we believe that biofuel and food production deserve to be treated equally and that if the board of land and natural resources is authorized to give biofuel producers the ability to directly negotiate for public agricultural lands than the same privilege should be given to food producers. Also we believe that the same preference for use of locally produced biodiesel fuels in State vehicles should be extended to Hawaii grown agricultural products in State operated schools, hospitals, correctional centers and other State supported institutions.

LINDA LINGLE
GOVERNOR OF HAWAII



**STATE OF HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES**

POST OFFICE BOX 621
HONOLULU, HAWAII 96809

LAURA H. THIELEN
CHAIRPERSON
BOARD OF LAND AND NATURAL RESOURCES
COMMISSION ON WATER RESOURCE MANAGEMENT

RUSSELL Y. TSUJI
FIRST DEPUTY

KEN C. KAWAHARA
DEPUTY DIRECTOR - WATER

AQUATIC RESOURCES
BOATING AND OCEAN RECREATION
BUREAU OF CONVEYANCES
COMMISSION ON WATER RESOURCE MANAGEMENT
CONSERVATION AND COASTAL LANDS
CONSERVATION AND RESOURCES ENFORCEMENT
ENGINEERING
FORESTRY AND WILDLIFE
HISTORIC PRESERVATION
KAHOOLAWE ISLAND RESERVE COMMISSION
LAND
STATE PARKS

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

On House Bill 3410, House Draft 2- RELATING TO BIODIESEL

**BEFORE THE SENATE COMMITTEES ON
ENERGY AND ENVIRONMENT
and
AGRICULTURE AND HAWAIIAN AFFAIRS**

March 11, 2008

House Bill 3410, House Draft 2 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 supports the intent of this legislation but prefers that the Legislature continue to pursue passage of House Bill 3179, a similar measure proposed by the Administration, and referred to your committees, 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.

**Testimony before the
Senate Committees on

Energy and Environment
and
Agriculture and Hawaiian Affairs**

H.B. 3410 HD2 – Relating to Biodiesel

**Tuesday, March 11, 2008
2:15 pm, Conference Room 414**

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

Chairs Menor and Tokuda, Vice-Chairs Hooser and English 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 HD2 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 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; and
- HECO is examining micro-algae biofuel development that could use carbon dioxide from our power plant stacks.

In conclusion, HECO Utilities support H.B. 3410 HD2 as a way to stimulate the development of locally produced biofuels.

Thank you for the opportunity to present this testimony.



TESTIMONY IN SUPPORT OF HB 3410, HD2 – Senate ENE and AHW Committees

February 11, 2008

2:15 PM – Conference Room 414

Chair Menor, Chair English, respected committee members, I am Landis Maez, President of BlueEarth Biofuels. BlueEarth Biofuels is building a state-of-the-art biodiesel plant on Maui which will significantly advance the State toward fossil fuel independence. We will eventually be replacing all of the petroleum diesel used by the Maui Electric Company with sustainable (as certified via independent 3rd party audit) biodiesel and moving Maui closer to real fossil fuel independence while making a significant positive impact on life-cycle greenhouse gas emissions.

BlueEarth's philosophy is all about 'Doing It Right' and setting the bar very high for our industry. Part of 'Doing it Right' includes creating local feedstock sources to; enhance our energy security, create jobs within the agricultural sector, preserve our agricultural lands, and re-green fallow agricultural lands with important revenue producing crops.

In walking-the-walk, BlueEarth is investing heavily in the required brick-and-mortar to stimulate meaningful local agriculture investment and will be sharing our profits with local agriculture for ongoing bio-crop infrastructure development. More importantly, we have fully committed to buying local feedstock when it becomes available and will do so under long-term contracts (including adequate financial guarantees for each of those contracts) with growers as they need not shoulder the out-year price and quantity risk burden for their new crops and associated agricultural businesses.

BlueEarth Biofuels fully supports HB 3410, HD2, which provides important incentives and stimulus measures to local farmers and producers to grow and process local vegetable oils to replace the State's petroleum needs. This coupled with the biodiesel industry's responsibility to secure long-term financially backed offtake contracts with local farmers and producers will further enhance our State's ability to meet the environmental, energy security, and economic challenges that lie ahead.

We see this bill as a strong and positive step towards ending the State's dependence on fossil fuels. Thank you for your time and consideration in allowing me to testify today.

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: HB 3410, HD-2

INTRODUCED BY: House Committee on Finance

STAFF COMMENTS: Amends HRS section 235-7 to exclude from state income taxation 100% of the 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 other amendments relating to establishing incentives for the production of biodiesel in the state.

The amendments made to HRS chapter 235 by this act shall not be repealed when that section is reenacted on January 1, 2013 pursuant to Act 166, SLH 2007.

EFFECTIVE DATE: January 1, 2020

STAFF COMMENTS: This measure proposes an incentive to encourage the production of biodiesel in the state in the form of 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.

Again it should be noted that this measure proposes an exclusion of income from the net income tax. It should be remembered, companies only pay taxes when they make a profit, that is income is greater than expenditures. As such, this bill rewards a company for making profits while all other businesses that make profits must pay the income tax. If this operation were not profitable, then income tax would not apply. It would only seem fair that some of the profits made by the company go to pay for the public services provided to that business and its employees. Further, it should be noted that by exempting the business from the state income tax on its profits, it exposes more of those profits to the federal income tax where the rates are much higher. Thus, in the end, this exemption would end up sending more tax dollars to Washington while leaving Hawaii empty handed.

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.

LIFE OF THE LAND

Ua Mau Ke Ea O Ka 'Aina I Ka Pono

76 North King Street, Suite 203, Honolulu, Hawai'i 96817
Phone: (808) 533-3454 * E-Mail: henry.lifeoftheland@gmail.com

COMMITTEE ON ENERGY & ENVIRONMENT

Chair: Senator Ron Menor

Vice Chair: Senator Gary Hooser

COMMITTEE ON AGRICULTURE & HAWAIIAN AFFAIRS

Chair: Senator Jill Tokuda

Vice Chair: Senator J Kalani English

Tuesday, March 11, 2008

Time: 2:15 pm

Room 414

HB 3410 Biofuel HD2

Aloha Chairs Menor, Tokuda, Vice Chairs Hooser, English Members of the Committees,

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.

This year the Legislature is considering buying Turtle Bay, Coco Palms Resort, Galbraith Estate, the Ka 'Iwi Coast and paying for ceded lands. The Council on Revenues which controls expenditures, has reported a downturn in the economy.

"The Council on Revenues, established under section 37-111, Hawaii Revised Statutes, prepares revenue estimates of the state government for each fiscal year of the six-year state program and financial plan. ... Estimates prepared by the Council are considered by the governor in preparing the state budget, recommending appropriations, and controlling expenditures; they are considered by the legislature in appropriating funds and enacting revenue measures."
(http://hawaii.gov/tax/a9_1cor.htm)

Energy is needed to power life and machines. Virtually every living entity on the planet breathes oxygen and or carbon dioxide and exhales the other. Agriculture converts solar energy into plant energy, often it is grown with nitrogen fertilizers such as N₂O. Coal, oil and natural gas energy release carbon when unearthed, and used. Everything leaves a footprint.

Energy production, nitrogen fertilizers and emissions from life forms impact carbon levels in the atmosphere and play a role in world temperatures and climate change. With the future of planet stability at stake, there is no state mechanism in place to control greenhouse gas emissions, except for Act 234-2007, which will not restrict emissions until 2020. The net impact on greenhouse gas emissions is not evaluated in considering any legislation.

What if ... Climate Change is real

We pass laws that increase greenhouse gas emissions

Because ... It is good for some local businesses in the short-term.

What legacy are we leaving our children ???

Biofuels can increase or reduce greenhouse gas emissions depending on which ones are grown, and how they are manufactured, used and disposed of. Biofuels impact land use, population growth, and food supply.

All Hawai'i legislation on biofuels has simply and naively assumed that under all conditions they are good and should be supported. This policy is in serious need of a significant exploration and research.

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>

New York Times (February 8, 2008): Biofuels Deemed a Greenhouse Threat
<http://www.nytimes.com/2008/02/08/science/earth/08wbiofuels.html?hp>

Asia Times (Nov 29, 2007) More bad rap on Asian biofuels
<http://www.atimes.com/atimes/Southeast Asia/IK29Ae01.html>

Wall Street Journal (November 28, 2007) Ethanol Craze Cools As Doubts Multiply
<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.
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 www.csmonitor.com/2007/0521/p09s02-coop.html

The Nature Conservancy
According to the study, co-authored by Joe Fargione, a regional scientist for the Conservancy, "converting rainforests, peatlands, savannas, or grasslands to produce biofuels in Brazil, Southeast Asia, and the United States creates a 'biofuel carbon debt' by releasing 17 to 420 times more carbon dioxide than the fossil fuels they replace." www.nature.org/initiatives/climatechange/features/art23819.html

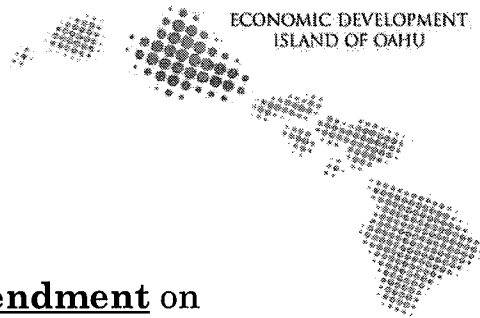
The Garden Island (Feb 23, 2008)
Crop biofuels unlikely to halt climate change
www.kauaiworld.com/articles/2008/02/24/news/ne

BBC (March 6, 2008) Warnings over future food crisis: New [UK] chief science adviser, Professor John Beddington ... The world's 6.5 billion population is expected to reach nine billion by 2050. This, combined with growing consumption as poverty is alleviated, will put huge pressure on food supplies, he said. Climate change is expected to worsen the problem, reducing rainfall and affecting crop growth. Added to this, efforts to tackle climate change - by using biofuels instead of fossil fuels - are taking more land away from food production.
<http://news.bbc.co.uk/1/hi/uk/7282196.stm>

United Nations (February 14, 2008) Biofuels are starving the poor by driving up food prices <http://news.mongabay.com/2008/0214-fao.html>

Newsday (February 18, 2008) Editorial: Don't be biofooled about biofuels
The nation's enthusiastic embrace of biofuels as a greener alternative to imported petroleum has run afoul of the law of unintended consequences. ... Ethanol production is already jacking up food prices, another unintended consequence. A sound energy policy must take all this into account in the rush for greener alternatives. www.newsday.com/news/opinion/ny-vpbio185582310feb18.0.373591.story

Henry Curtis
Executive Director



March 11, 2008

Hawaii State legislature
State Capital

**Support Testimony with amendment on
H.B. NO. 3410 - RELATING TO BIODIESEL**

Committee on Energy and Environment
Senator Ron Menor, Chair, Senator Gary Hooser, Vice Chair
Committee on Agriculture and Hawaiian Affairs
Senator Jill Tokuda, Chair, Senator J. Kalani English, Vice Chair

Tuesday, March 11, 2008, 2:15 p.m., Conference Room 414

Chair Menor, Chair Tokuda and members of the Committees: Enterprise Honolulu supports **H.B. 3410 with a simple amendment**,

Enterprise Honolulu has worked diligently for the past five years to improve Hawaii's self sufficiency and sustainability in energy, food, and overall resources. We support the intent of this bill to accelerate the growing and processing of biofuels feedstock.

However, the last sentence under Section 14, line 20, page 12 should **be amended** to **delete** the last 10 words: **"and may not be integrated with a biodiesel production facility"**. There are unintended consequences to this statement.

If the intent is to promote biomass development on all fronts, this statement should be deleted. If left in, the unintended consequences would include: independent producers cannot benefit by forming coops to both grow biocrops **and** produce biodiesel, Pacific Biodiesel and Gay & Robinson could be financially impacted since both have this type of facility integrated in their growth plans and should benefit from this legislation, and of course Imperium Renewables and Blue Earth Hawaii could not act as aggregators of independent growers who simply want to bring crops (biomass feedstock) to market.

The bill **with this amendment** provides a measured step forward in jumpstarting the industry and correctly addresses critical needs. It doesn't need a restrictive statement that could negatively impact the smaller growers and producers.

Enterprise Honolulu supports **H.B. 3410 with the proposed amendment**.

John Strom

VP Director of Business Development & Technology



**ENTERPRISE
HONOLULU**

737 Bishop Street, Suite 2040, Honolulu, Hawaii 96813 • 808-521-3611
Fax: 808-536-2281 • www.EnterpriseHonolulu.com

THE BUSINESS CLIMATE OF PARADISE

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

COMMITTEE ON ENERGY AND ENVIRONMENT

Sen. Ron Menor- Chair
Sen. Gary Hooser- Vice Chair

COMMITTEE ON AGRICULTURE AND HAWAIIAN AFFAIRS

Sen. Jill Tokuda- Chair
Sen. J. Kalani English- Vice Chair

DATE: Tuesday, March 11, 2008

TIME: 2:15 PM

PLACE: Conference Room 414

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 relation to this idea, I would like to request an amendment to the language of the bill. The final sentence in section 4 which begins with "Oil seed crushing facility" has language which would prevent a biodiesel production facility from being co-located with a seed crushing facility. I ask that the end of the sentence beginning with "and that is not integrated with a biodiesel production facility." be removed as it may prove advantageous to put these two types of facilities in the same space-particularly for small operations.

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

Pacific Biodiesel, Inc.
40 Hobron Avenue
Kahului, Hawaii 96732
Phone (808) 877-3144
Fax (808) 877-5030
www.biodiesel.com