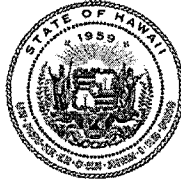


LINDA LINGLE  
GOVERNOR

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 COMMITTEE ON ECONOMIC DEVELOPMENT & TAXATION

### TESTIMONY REGARDING SB 3215 RELATING TO BIODIESEL

TESTIFIER: KURT KAWAFUCHI, DIRECTOR OF TAXATION (OR DESIGNEE)  
DATE: FEBRUARY 12, 2008  
TIME: 1:15PM  
ROOM: 224

---

This legislation, among other things, includes a provision exempting lands used for the production of biodiesel from the real property tax as well as a provision requiring the State to purchase biodiesel crops at a guaranteed profit to growers, and amends Section 235-7 to include an income tax exemption for income derived from the operation of an oil seed crushing facility.

The Department of Taxation (Department) provides comments on this legislation.

#### REAL PROPERTY EXEMPTIONS

The Department has no comments on the real property exemption, other than it will impact county revenues.

#### TECHNICAL CONSIDERATION - INCOME TAX EXEMPTION

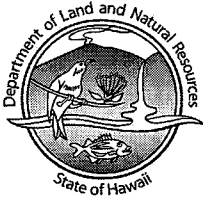
The Department notes that the income tax exemption, listed as subsection (a)(14) of Section 4 of the bill, is vague. It is unclear whether the tax exemption applies to 100% of income derived from the processing of oil seed produced in the State or to 100% of all income from any facility that processes any amount of oil seed produced in the State.

#### REVENUE IMPACT

This bill will result in an indeterminate revenue loss.

There is a 2006 study done by the Hawaii Agricultural Research Center that discusses all the potential feedstock crops that can grow in Hawaii, but based on this study and discussions with DBEDT, these viable crops are not currently in production. The bill applies to companies that use locally produced feedstock crops in the production of their biodiesel fuel.

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**

**Senate Bill 3215, Senate Draft 1- RELATING TO BIODIESEL**

**BEFORE THE SENATE COMMITTEE ON  
ECONOMIC DEVELOPMENT AND TAXATION**

**February 12, 2008**

Senate Bill 3215, Senate Draft 1 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.

Should the Committee be inclined to pass this measure, the Department recommends that page 3, lines 1 to 3 allowing the Board of Land and Natural Resources (Board) to adopt rules be deleted. Adopting rules is not necessary because the Board can authorize long-term leases pursuant to Section 171-95, Hawaii Revised Statutes (HRS), and Section 171-6(4), HRS already provides general rulemaking authority to the Board.

LINDA LINGLE  
Governor



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

**SANDRA LEE KUNIMOTO**  
Chairperson, Board of Agriculture

**DUANE K. OKAMOTO**  
Deputy to the Chairperson

**TESTIMONY OF SANDRA LEE KUNIMOTO  
CHAIRPERSON, BOARD OF AGRICULTURE**

**BEFORE THE SENATE COMMITTEE ON  
ECONOMIC DEVELOPMENT AND TAXATION  
TUESDAY, FEBRUARY 12, 2008  
1:15 p.m.  
Room 224**

**SENATE BILL 3215, S.D. 1  
RELATING TO BIODIESEL**

Chairpersons Menor and Tokuda and Members of the Committees:

Thank you for the opportunity to testify on Senate Bill No. 3151, S.D. 1. We offer the following comments and concerns. This bill has five incentives to be offered by State and county governments to stimulate the development of biodiesel feedstock production and processing of biodiesel fuels in Hawaii:

1. The Department of Land and Natural Resources is to offer the best State-owned agricultural lands to biofuel feedstock growers by direct negotiation rather than public auction;
2. The State is to give preference to locally-grown and processed biodiesel blends to fuel its diesel powered vehicles;
3. The Department of Agriculture, through its energy feedstock program (Section 141-9, HRS) is to purchase locally-grown biodiesel feedstock, biodiesel fuel, and blended diesel from producers and processors and determine what to do with it;
4. Excludes from taxable income the gains to owners of leasehold properties who sell for fee, and to processors for crushing oil seed; and
5. The counties are to exempt biofuel feedstock production from property taxes.

The Department of Agriculture believes incentives 1, 2, 4, and 5 have merit. However, we do have a concern with incentive number 3, the proposal for the State, through the HDOA's energy feedstock program, to purchase locally-produced biodiesel feedstock and fuel and determine its disposition. We believe this must be dealt with in the private sector - between processors, distributors, and retailers. In any case, we believe it would be better that these incentives be reconsidered upon the completion of the comprehensive renewable biofuels planning framework presently being developed by the Department of Business, Economic Development, and Tourism (DBEDT), pursuant to Act 253 that was passed by the 2007 Legislature. In accordance with Act 253, DBEDT is undertaking a bioenergy master plan that will include a Hawaii renewable biofuels program to manage the State's transition to energy self-sufficiency based in part on biofuels for power generation and transportation. The components of the plan include establishing strategic partnerships for the research, development, testing, and deployment of renewable biofuels technologies and production of biomass crops; evaluation of Hawaii's potential to rely on biofuels as a significant renewable energy resource; supporting biofuels demonstration projects, including infrastructure for production, storage, and transportation of biofuels; promoting Hawaii's renewable biofuels resources to potential partners and investors for development in Hawaii as well as for export purposes; and developing a plan or roadmap to implement commercially viable biofuels development.

We believe that biofuel and food production deserve to be treated as equally important so the same consideration the board is authorized to give biofuels for nominal lease rents and by negotiation should also be afforded to food crops.

**Testimony before the  
Senate Committee on  
  
Economic Development and Taxation**

**S.B.3215 SD1 – Relating to Biodiesel**

**Tuesday, February 12, 2008  
1:15 pm, Conference Room 224**

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

Chair Fukunaga, Vice Chair Espero, and Members of the Committee:

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 S.B. 3215 SD1 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—a Public Trust Fund would be formed as part of this activity;
- 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 S.B. 3215 SD1 as a way to stimulate the development of locally produced biofuels.

Thank you for the opportunity to present this testimony.

SB 3215 promote biofuel 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 "biofuel" 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>

**testimony**

---

**From:** Wright, Marcia [marcia.wright@heco.com]  
**Sent:** Friday, February 08, 2008 5:49 PM  
**To:** testimony  
**Subject:** SB 3215 SD1 TEstimony for ENE-AHW hearing on 2-12-08  
**Attachments:** SB 3215 SD1 Testimony ENE-AHW 2-12-08.pdf

Attached is testimony on SB 3215 SD1 by Arthur Seki, Director, Technology, Hawaiian Electric Company, for hearing by the joint ENE/AHW committees on Tuesday 2/12/08 at 1:15pm. Thank you.

<<SB 3215 SD1 Testimony ENE-AHW 2-12-08.pdf>>

*Marcia Wright*  
543-5860  
543-7202 fax  
203-1636 personal fax  
marcia.wright@heco.com

---

CONFIDENTIALITY NOTICE: This e-mail message, including any attachments, is for the sole use of the intended recipient(s) and may contain confidential and/or privileged information. Any unauthorized review, use, copying, disclosure or distribution is prohibited. If you are not the intended recipient, please contact the sender immediately by reply e-mail and destroy the original message and all copies.



# 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 ECONOMIC DEVELOPMENT AND TAXATION

Chair: Senator Carol Fukunaga

Vice-Chair: Senator Will Espero

Tuesday, February 12, 2008

1:15 p.m.

Conference Room 224

**Bill: SB3215 Biodiesel**

Aloha Chair Fukunaga, Vice Chair Espero 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.

The bill states that the Board of Land and Natural Resources (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.

**To: Senate Sergeant-at-Arms—Please provide provide 20 copies.**

COMMITTEE ON Economic Development and Taxation Committee

Sen. Carol Fukunaga, Chair

Sen. Will Espero, Vice Chair

DATE: Tuesday, December 12, 2008

TIME: 1:15 pm

PLACE: Conference Room 224

RE: SB 3215 Relating to Biodiesel

FROM: Bryan Collins, Pacific Biodiesel

Aloha Honorable Senators,

I am writing in support of SB 3215 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

**Pacific Biodiesel, Inc.**

**40 Hobron Avenue**

**Kahului, Hawaii 96732**

Phone (808) 877-3144

Fax (808) 877-5030

[www.biodiesel.com](http://www.biodiesel.com)

## SB 3215, SD-1 - Continued

the tax credit per qualified clinical trial for each tax year the credit is claimed and the cumulative amount of the tax credit for all years.

Directs the department of taxation to issue a letter to the taxpayer regarding the qualified clinical trial, specifying the qualified clinical trial costs and the tax credit amount qualified for in each year the credit was claimed. Requires the taxpayer to file the letter with the taxpayer's tax return to the department of taxation.

Limits the total tax credits claimed per qualified clinical trial to \$8 million.

Defines "qualified clinical trials" and "qualified clinical trial costs" for purposes of the measure.

**EFFECTIVE DATE:** Tax years beginning after December 31, 2007

**STAFF COMMENTS:** This measure proposes an incentive in the form of an income tax credit to encourage life sciences companies to conduct clinical trials in Hawaii. Tax credits generally are designed to alleviate an undue burden on those who are unable to carry that burden, largely the poor and low income. An example is the 4% general excise tax food credit for purchases made by the poor. Inasmuch as there is absolutely no relationship between the cost of conducting clinical trials in Hawaii and the taxpayer's tax burden, there is little justification for granting this tax preference which would amount to a partial subsidy of such trials by state government.

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 group for tax relief, concurrent efforts must be made to improve Hawaii's business climate to enhance the economic prospects for all businesses.

This measure tasks the department of taxation with the pre-qualification, certification, verification and recordkeeping of claims for the clinical trial income tax credit and may result in an additional workload for the department, it forces the department to undertake tasks in which the department has no expertise. Further, some of the recordkeeping requirements appear to be redundant. In the section delineating requirements for the department's recordkeeping, not only does the measure require the department to maintain records of taxpayers claiming the credit, including the aggregate amounts of all qualified clinical trials costs per clinical trial and per clinical trial per taxable year, it also requires the department to provide a letter to the director of taxation with similar information. In other words, why is the department tasked with recordkeeping AND also sending a letter to itself reporting the same information?

Finally, while the measure limits the credit to \$8 million per qualified clinical trial, it does not specify a total dollar amount that may be claimed for all clinical trials conducted in the state. Thus, it should be remembered that unless lawmakers reduce spending by an amount equal to the loss of revenues this bill represents, all other taxpayers will have to pick up the tab for this tax incentive. So instead of improving the plight of the taxpayer and the overall economic and business environment, this measure makes sure it remains difficult to survive in Hawaii.

Digested 2/11/08

**SB 3215, SD-1 - Continued**

exempted from the real property tax, this is a matter for the respective county governments as the real property taxation powers have been transferred to the respective counties.

Finally, as we are all learning the efficacy of using biomass fuels has now been brought into question where some studies show that the road to the production and use of biomass could produce far more greenhouse gases than biomass purportedly saves. Granting tax breaks to technologies that have yet to be proven to be beneficial is like handing out good grades for homework poorly done.

Digested 2/11/08