

SB 1307



**DEPARTMENT OF BUSINESS,
ECONOMIC DEVELOPMENT & TOURISM**

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Statement of
THEODORE E. LIU
Director
Department of Business, Economic Development, and Tourism
before the
SENATE COMMITTEE ON ENERGY AND ENVIRONMENT
and
SENATE COMMITTEE ON COMMERCE AND CONSUMER PROTECTION
Thursday, February 5, 2009
2:45 PM
State Capitol, Conference Room 225

in consideration of
SB 1307
RELATING TO ALCOHOL FUELS.

Chairs Gabbard and Baker; Vice Chairs English and Ige; and Members of the
Committees.

The Department of Business, Economic Development, and Tourism (DBEDT) has
concerns about the constitutionality of SB 1307, which would establish a preference for locally
produced alcohol fuels.

It is our understanding that this type of preference would be considered to interfere with
interstate commerce and therefore would be subject to challenge in Federal court.

Thank you for the opportunity to offer these comments.

LINDA LINGLE
GOVERNOR

JAMES R. AIONA, JR.
LT. GOVERNOR



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**SENATE COMMITTEE ON ENERGY & ENVIRONMENT
TESTIMONY REGARDING SB 1307
RELATING TO ALCOHOL FUELS**

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

DATE: FEBRUARY 5, 2009

TIME: 2:45pm

ROOM: 225

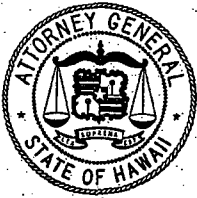
This measure implements a renewable fuel standard in conjunction with the existing alcohol fuel exemption under the General Excise Tax (GET) to be administered by the Department of Business, Economic Development & Tourism.

The Department of Taxation (Department) **supports efforts to reduce the State's dependency on foreign oil**; however must **oppose the revenue loss** contained in this measure.

DIFFICULT TO ADMINISTER—The Department has concerns with how this bill is to be administered. The Department is unsure whether the "renewable fuel standard" contemplated by this measure will be determined and disseminated efficiently enough for taxpayers to be aware of their obligations under this proposed bill. The standard could be met at any time, changing the rules for taxpayers. The Department is unsure how the alcohol fuel exemption is to be administered when it is phased-in over time with the increase in local production. Fuel is fungible. How should only half of the fuel sold in Hawaii be exempt? First come, first served? First to file? Lottery? By parsing out the amount of exempt fuel, this law becomes very difficult to administer.

POTENTIALLY UNCONSTITUTIONAL—The Department raises the issue of potential unconstitutionality of this measure because it favors in-state activities over out-of-state activities. This type of tax legislation is presumptively discriminatory against commerce. The US Supreme Court case based upon a discriminatory Hawaii tax, *Bacchus Imports v. Dias*, 468 US 263 (1984) is noteworthy. In this case, wine produced from *okolehao* was exempt from Hawaii tax. The US Supreme Court found that favoring local-based products was unconstitutional.

UNBUDGETED REVENUE LOSS—The current alcohol fuel exemption is set to expire after June 30, 2009. An extension of the exemption is currently not factored into the budget. Though extending the alcohol fuel exemption would benefit consumers, the general fund cannot afford such a loss at this time. This measure will result in a revenue loss of approximately \$40 million per year for FY 2010 through 2015, assuming the standards are met.



**TESTIMONY OF THE STATE ATTORNEY GENERAL
TWENTY-FIFTH LEGISLATURE, 2009**

ON THE FOLLOWING MEASURE:

S.B. NO. 1307, RELATING TO ALCOHOL FUELS.

BEFORE THE:

SENATE COMMITTEES ON ENERGY AND ENVIRONMENT
AND ON COMMERCE AND CONSUMER PROTECTION

DATE: Thursday, February 5, 2009 **TIME:** 2:45 PM

LOCATION: State Capitol, Room 225

TESTIFIER(S): Mark J. Bennett, Attorney General
or Mary Bahng Yokota, Deputy Attorney General

Chair Gabbard, Chair Baker, and Members of the Committees:

This bill may be challenged as violating the Commerce Clause of the U.S. Constitution.

A cardinal rule of Commerce Clause jurisprudence is that "[n]o State, consistent with the Commerce Clause, may 'impose a tax which discriminates against interstate commerce . . . by providing a direct commercial advantage to local business.'" Bacchus Imports, Ltd. v. Dias, 468 U.S. 263, 268 (1984) citing Boston Stock Exchange v. State Tax Comm'n, 429 U.S. 318, 329 (1977).

The stated purpose of this bill is to establish a preference for "locally produced alcohol fuels." For this purpose, this bill amends the existing general excise tax exemption for alcohol fuels to favor locally produced alcohol fuels.

In Bacchus, the U.S. Supreme Court found that an exemption similar to the exemption proposed in this bill violated the Commerce Clause. At issue in Bacchus was the Hawaii liquor tax, which was originally enacted in 1939 to defray the costs of police and other governmental services. Because the Legislature sought to encourage development of the Hawaiian liquor industry, it enacted an exemption from the liquor tax for okolehao (a brandy distilled from the root of the ti plant, an indigenous shrub of Hawaii) and for certain fruit wine manufactured in

Hawaii. The U.S. Supreme Court concluded that the exemption violated the Commerce Clause because the exemption had both the purpose and effect of discriminating in favor of local products. The general excise tax exemption for alcohol fuel, as amended by this bill, appears to have similar purpose and effect as the exemption that violated the Commerce Clause in Bacchus.

We recommend that this bill be held.

SB 1307

RELATING TO ALCOHOL FUELS

**JOEL K. MATSUNAGA
CHIEF OPERATING OFFICER & EXECUTIVE VP
HAWAII BIOENERGY**

FEBRUARY 5, 2009

Chairs Gabbard and Baker, and Members of the Senate Committee on Energy and Environment and Senate Committee on Commerce and Consumer Protection:

I am Joel Matsunaga, testifying on behalf of Hawaii BioEnergy on SB 1307, "Relating to Alcohol Fuels".

SUMMARY

Hawaii BioEnergy ("HBE") supports this bill as it recognizes the importance to Hawaii of improving its energy security by encouraging the development of locally produced ethanol and of creating jobs and economic benefits in Hawaii rather than sending dollars overseas to import fossil fuels. Locally grown feedstocks not only reduce the dependence on imported fossil fuels, but also of biofuels that are being imported and do not contribute the same economic benefits to Hawaii.

HAWAII BENEFITS FROM LOCAL ETHANOL PRODUCTION

Hawaii BioEnergy is a local company with a mission to help Hawaii toward a sustainable energy future through the production of biofuels from locally grown feedstocks. Among its partners are three of the larger land owners in Hawaii who control in total over 430,000 acres of land. HBE and its partners would like to use significant portions of their land to address Hawaii's energy needs. Since its inception

in 2006, HBE has been researching various biofuels alternatives and their suitability to Hawaii.

One of the biofuel alternatives which HBE is currently considering is to develop locally produced ethanol through the growing of sugar cane, sweet sorghum, or other crops that can be fermented into ethanol. The production of ethanol in Hawaii will provide its residents with better energy security, create a significant number of jobs, reduce the burning of fossil fuels, and retain dollars in the State's economy rather than sending them overseas. Based on an independent analysis commissioned by HBE, its projected that a large scale agricultural operation along with an ethanol facility could provide up to 1,400 new jobs and over \$115 million in added value in the State.

In addition to the economic benefits of local ethanol production, Hawaii would benefit greatly from the energy security that would result from having a significant portion of its energy needs met by locally grown feedstocks. In addition to the energy security, ethanol from locally grown feedstocks will also help to reduce the severe volatility of energy prices associated with the price of fossil fuels as they fluctuate with world demand and politics.

SB 1307 ENCOURAGES LOCAL PRODUCTION OF RENEWABLE ENERGY

In recognition of the importance of Hawaii reducing its dependence on fossil fuels, the State currently provides within HRS §237-27.1 an exemption from certain general excise taxes related to the sale of "alcohol fuels". SB 1307 recognizes the importance of a locally produced renewable fuels by directing that the exemption from taxes be applicable first to locally produced fuels, when those fuels are available. Thus, encouraging the development of a local ethanol production capacity. Absent any local

production, the exemption would function as it does currently. However, to the extent that locally produced sources of ethanol become available, the exemption would be applicable to the local ethanol capacity before it can be applied to imported ethanol.

SB 1307 simply redirects the tax exemption, when appropriate, from imported ethanol to locally produced ethanol. From a public policy perspective, SB 1307 recognizes the importance of improving Hawaii's energy security and recognizing the economic benefits that accrue to the State's residents from the job creation and other economic benefits that result from a locally produced renewable fuel source. SB 1307 also recognizes the realities of the State's budget issues and provides an incentive for locally produce renewable fuels which still being budget neutral.

CONCLUSION

HBE is moving forward with projects that will help to address Hawaii's energy future and ethanol production is among the projects being considered. SB 1307 would impact the tax exemptions within HRS §237-27.1 only when locally produced ethanol becomes available. By doing so, SB 1307 furthers the public policy objective of creating more sources of locally produced renewable energy and all of its benefits to Hawaii's residents.

Based on the aforementioned, Hawaii BioEnergy respectfully requests your support for SB 1307.

Thank you for the opportunity to testify.