

SB 511

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 ENERGY & ENVIRONMENT

TESTIMONY REGARDING SB 511 RELATING TO BIODIESEL

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

DATE: FEBRUARY 17, 2009

TIME: 2:45PM

ROOM: 225

This legislation, among other things, amends Section 235-7, HRS, to include an income tax exemption for income derived from an oil seed crushing facility.

The Department of Taxation (Department) **opposes the tax provision in this bill due to the unbudgeted revenue loss anticipated by this measure.**

BIODIESEL GENERALLY

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.

POTENTIAL CONSTITUTIONAL PROBLEM

The Department points out that this legislation may infringe upon the famous Hawaii US Supreme Court case, *Bacchus Imports vs. Dias*, 468 US 263 (1984). In *Bacchus*, Hawaii exempted okolehau and local fruit wine from tax. Because this law favored in-state wines over out-of-state wines, the US Supreme Court found that the exemption was a facially unconstitutional infringement of the Commerce Clause.

Also on point is the US Supreme Court case *New Energy Co. of Indiana v. Limbach*, 486 US 269 (1988), which found a tax credit for purchases of ethanol produced in-state likewise unconstitutional.

The Department believes that the requirement that the biodiesel be produced from "oil seed produced or grown in the State," could be found unconstitutional based on these cases. The

Department defers to the Attorney General on the analysis of the constitutional issues raised.

The Department offers the following suggested amendments for the Committee's consideration:

- (14) One hundred per cent of income derived from the operation of an oil seed crushing facility that processes oil seed ~~[produced or grown in the state]~~ for biodiesel production in the state.

As used in this paragraph:

"Biodiesel" means a vegetable oil-based fuel that meets ASTM International Standard D6751, "Standard Specification for Biodiesel Fuel (B100) Blend Stock for Distillate Fuels," as amended.

"Biodiesel production facility" means a facility that processes feedstock to produce biodiesel.

"Oil seed crushing facility" means a facility that processes oil seed ~~[that is grown in the state,]~~ including soy, corn, bean, nut, olive, canola, mustard, and sunflower and other such crops and the seeds thereof, to be used as biomass to produce biodiesel."

REVENUE IMPACT

This bill will result in an indeterminate revenue loss for FY 2012 and thereafter.



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

LINDA LINGLE
GOVERNOR
THEODORE E. LIU
DIRECTOR
MARK K. ANDERSON
DEPUTY DIRECTOR

No. 1 Capitol District Building, 250 South Hotel Street, 5th Floor, Honolulu, Hawaii 96813
Mailing Address: P.O. Box 2359, Honolulu, Hawaii 96804
Web site: www.hawaii.gov/dbedt

Telephone: (808) 586-2355
Fax: (808) 586-2377

Statement of
THEODORE E. LIU
Director
Department of Business, Economic Development, and Tourism
before the
**SENATE COMMITTEES ON
ENERGY AND ENVIRONMENT**
and
WATER, LAND, AGRICULTURE , AND HAWAIIAN AFFAIRS

Tuesday, February 17, 2009
2:45 PM
State Capitol, Conference Room 225

in consideration of
SB 511
RELATING TO BIODIESEL.

Chair Gabbard, Vice Chair English, and Members of the Committee.

The Department of Business, Economic Development, and Tourism (DBEDT) defers to the Department of Land and Natural Resources and provides comments on Section 1 of SB 511, which would allow the Department of Land and Natural Resources to lease lands directly to producers of oil seeds. We support the intent of section 2, which would establish a purchase preference for State government purchases of biodiesel blends, as long as its implementation does not impact or replace the priorities set forth in the Executive Biennium Budget for Fiscal Years 2009-2010; and we defer to the Department of Taxation on Section 3 of the bill, which would provide an income tax credit for oil seed crushing facilities using oil seeds grown in the state.

The amendments proposed by Section 1 of the bill may not be necessary, as §171-95 (a)(2) currently provides that (emphasis added):

(a) Notwithstanding any limitations to the contrary, the board of land and natural resources may, without public auction:

...

- (2) Lease to the governments, agencies, public utilities, **and renewable energy producers** public lands for terms up to, but not in excess of, sixty-five years at such rental and on such other terms and conditions as the board may determine;

Also, §171-95 (c) provides that:

(c) For the purposes of this section, "renewable energy producer" means:

- (1) Any producer of electrical or thermal energy produced by wind, solar energy, hydropower, landfill gas, waste-to-energy, ocean thermal energy conversion, cold seawater, wave energy, biomass, including municipal solid waste, **biofuels or fuels derived from organic sources**, hydrogen fuels derived primarily from renewable energy, or fuel cells where the fuel is derived primarily from renewable sources that sell all of the net power produced from the demised premises to an electric utility company regulated under chapter 269 or that sells all of the thermal energy it produces to customers of district cooling systems; provided that up to twenty-five per cent of the power produced by a renewable energy producer and sold to the utility or to district cooling system customers may be derived from fossil fuels; or
- (2) **Any grower or producer of plant or animal materials used primarily for the production of biofuels or other fuels**; provided that nothing herein is intended to prevent the waste product or byproduct of the plant or animal material grown or produced for the production of

biofuel, other fuels, electrical energy, or thermal energy, from being used for other useful purposes."

Therefore, the modifications proposed by Section 1 of this bill may not be necessary.

The biofuel preferences contained in Section 2 of the bill are similar in intent to those contained in Senate Bill 872, an Administration measure, but greater in magnitude. We support the intent of this section as long as its implementation does not impact or replace the priorities set forth in the Executive Biennium Budget for Fiscal Years 2009-2010. We estimate that the proposed preference would cost between \$150,000 and \$600,000 per year if all the diesel fuel used by State government vehicles was replaced with a blend of biodiesel fuel at the stated preference level.¹ The expected benefits from the preference include economic and energy security benefits.

Thank you for the opportunity to offer these comments.

¹ Assuming B20, 1.2 million gpy, \$600,000; Assuming B5, 1.2 million gallons, \$150,000. SB872: 20% preference; at \$3.19/gal, B20, \$150,000; B5, \$37,000.

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
LAURA H. THIELEN
Chairperson

Before the Senate Committees on
ENERGY AND ENVIRONMENT
and
WATER, LAND, AGRICULTURE, AND HAWAIIAN AFFAIRS

Tuesday, February 17, 2009
2:45 PM
State Capitol, Conference Room 225

In consideration of
SENATE BILL 511
RELATING TO BIODIESEL

Senate Bill 511 provides various market stimulation incentives for the development of biodiesel, including make state agricultural lands available for biodiesel fuel crops. The Department of Land and Natural Resources (Department) supports the intent of SECTION 1 of this bill, and defers comments to all other portions of this measure to the appropriate agencies.

Adding the definition of biodiesel into Section 171-1, Hawaii Revised Statutes (HRS), - "Definitions", will certainly help clarify the identity of the operator/producer. The bill further proposes to include a new section in Chapter 171, HRS, "Lease of agricultural lands for crops used in the production of biodiesel fuel". This is unnecessary, as statutory provisions allowing dispositions contemplated by this bill are already in place.

Section 171-95(a)2, HRS, provides the Board of Land and Natural Resources (Board) may, without public auction lease to renewable energy producers public lands for terms up to, but not in excess of, sixty-five years. Section 171-95(c)2, HRS, includes any grower or producer of plant or animal materials used primarily for the production of biofuels or other fuels in the definition of renewable energy producers.

Further, Section 171-36, HRS already establishes the standard lease terms and conditions that apply to all leases of public lands, with appropriate exceptions for dispositions requiring special conditions. The language in the proposed new section is at most redundant if not conflicting with those standard terms and conditions. The specificity of authorized transaction methods used for the crops may be burdensome should industry standards or practices change. Establishing different, conflicting or ambiguous lease restrictions in the statutes for a specific type of

user/producer will make implementation and administration of the statute confusing and inefficient.

In order to ensure fair and consistent treatment of all leases issued by the Department, the Department respectfully request the Committees consider deleting this section (lines 1-17, page 2) from the bill.

**Testimony before the
Senate Committees on

Energy and Environment
and
Water, Land, Agriculture, and Hawaiian Affairs**

S.B. 511 – Relating to Biodiesel

Tuesday, February 17, 2009
2:45 pm, Conference Room 225

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

Chairs Gabbard and Hee, Vice Chairs English and Tokuda and members of the Committees:

My name is Arthur Seki—I am the Director of Technology at Hawaiian Electric Company. I am testifying on behalf of Hawaiian Electric Company (HECO) and its subsidiaries, Maui Electric Company (MECO) and Hawaii Electric Light Company (HELCO) hereinafter collectively referred to as HECO Utilities.

We support S.B. 511 which provides stimulation incentives for biodiesel development.

We respectfully offer a few amendments for clarification:

- Page 1, line 6—replace [vegetable] with organic;
- Page 1, line 14—add ...agriculture or aquaculture crops having...;
- Page 1, line 15-- replace [vegetable] with organic;
- Page 9, line 8—add ...oil seed crushing or oil processing facility...;
- Page 9, line 9—add processes oil seed or crude biofuel produced....;
- Page 9, line 12-- replace [vegetable] with organic;
- Page 9, line 22—add new definition. “Oil processing facility” means a facility that processes crude biofuel that is grown in the state including palm oil, jatropha and other crops to be used as crude biofuel to produce a refined biofuel.

As you are aware, the HECO Utilities are committed to exploring and using biofuels in its existing and planned generating units. The amendment we proposed will help biofuel production facility development. 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 activities:

- Installing the 2009 power plant (100 MW) at Campbell Industrial Park to be 100% biofueled;
- Testing biodiesel in its diesel engines and combustion turbine at MECO's Maalaea power plant and conducting further tests;
- Planning for a 30-day test at Kahe 3 biofuel co-firing demonstration in a steam boiler generating unit for late 2009;
- Provided 2 years of 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 a 3rd to follow this year; and
- Evaluating micro-algae for biofuels and ocean energy projects.

In conclusion, the HECO Utilities support S.B. No. 511 with the above amendments. Passage of this bill would provide further guidance and strong support for our concerted efforts to have continued growth in the use of renewable energy throughout the State.

Thank you for the opportunity to testify.



LIFE OF THE LAND

76 North King Street, Suite 203

Honolulu, Hawai'i 96817

Phone: 533-3454; E: henry.lifeoftheland@gmail.com

COMMITTEE ON ENERGY AND ENVIRONMENT

Senator Mike Gabbard, Chair

Senator J. Kalani English, Vice Chair

COMMITTEE ON WATER, LAND, AGRICULTURE, AND HAWAIIAN AFFAIRS

Senator Clayton Hee, Chair

Senator Jill N. Tokuda, Vice Chair

Tuesday, February 17, 2009

2:45 p.m.

Conference Room 225

SB 511 Biofuels

COMMENTS

Aloha Chairs Gabbard, Hee, Vice Chairs English, Tokuda and Members of the Committees

My name is Henry Curtis and I am the Executive Director of Life of the Land, Hawai'i's own energy, environmental and community action group advocating for the people and `aina for almost four decades. Our mission is to preserve and protect the life of the land through sound energy and land use policies and to promote open government through research, education, advocacy and, when necessary, litigation.

Energy policy is the cornerstone of sustainability.

SB 511 Provides various market stimulation incentives for the development of biodiesel, including making state agricultural lands available for biodiesel fuel crops.

Climate Change will bring major changes to Hawai'i, from seawater intrusion into coastal areas and aquifers, changing weather patterns and thus agriculture, and loss of beaches and other recreational areas.

Some biofuels may alleviate climate change, others will have enormous negative impacts. Today, the four leading countries in greenhouse gas emissions are (1) China (2) the U.S. (3) Indonesia and (4) Brazil. Indonesia and Brazil make the list because Land Use and Land Use Changes (LULUCs) account for 20% of global emissions.

This bill does not distinguish between good and bad biofuels, between those that will help avert and those that will lead to greater climate change.

This bill promotes a "first come first exploit" philosophy. Rather than side-by-side comparisons of alternative energy proposals -- as is done by the Federal Energy Regulatory Commission (FERC), this bill allows secret negotiations and signing of leases with little public input.

The FERC process is as follows: one company proposes the use of a public trust resource, others are allowed to offer alternative uses of the same public trust resource, intervenors are allowed in, the best proposal wins, ties go to the first proposer.

A full public analysis is paramount because Hawai'i needs to become self-sufficient in energy and food. A partial solution that we have all the energy we need but no food to eat is unacceptable.

Mahalo,

Henry Curtis

Tuesday, February 17, 2009
2:45 pm Conference room 225

COMMITTEE ON ENERGY AND ENVIRONMENT

Senator Mike Gabbard, Chair
Senator J. Kalani English, Vice Chair

COMMITTEE ON Water, Land, Agriculture, and Hawaiian Affairs

Senator Clayton Hee, Chair
Senator Jill Tokuda, Vice Chair

Testimony of Robert King, Pacific Biodiesel
In support of SB 511, Relating to biodiesel

Aloha Honorable Representatives,

Pacific Biodiesel, Inc. strongly supports SB 511 (companion, HB 668). We are a Hawaii corporation, making renewable fuel and innovating new technology in the biodiesel industry for 13 years. This pro-active legislation will provide incentives needed by local farmers to begin growing crops for sustainable biodiesel production.

Over the years I have been approached by numerous farmers who are interested in growing biodiesel feedstock. However, uncertainty of crop yields, cultivation techniques and revenues have prevented most of them from moving forward. SB 511 will create a small but secure platform for local farmers to take the first steps towards acquiring the practical knowledge and experience needed to effectively establish the renewable fuel industry in Hawaii. The 'on the ground' information can be used in tandem with scientific research already underway to rapidly generate a wealth of information for farming operations throughout Hawaii to create a continuing, sustainable local energy supply in the islands.

Pacific Biodiesel is committed to expanding our community-based model to involve more local farmers and community ownership. This will result in biodiesel grown, produced and consumed within the Hawaiian Islands in harmony with the needs for food and adequate water supplies. The community-based model optimizes energy security and local economic benefits, while minimizing the environmental impact of the entire biodiesel production cycle. SB 511 presents the legislature with an opportunity to increase the availability of locally produced biodiesel, and is a crucial first step towards involving Hawaii's farmers in the renewable energy economy we all desire.

Thank you for the opportunity to testify,

Robert King
President

Pacific Biodiesel, Inc.
40 Hobron Ave
Kahului, Hawaii 96732
Cell: (808) 283-4102
www.biodiesel.com

