

STAND. COM. REP. NO. 1292

Honolulu, Hawaii

March 27, 2009

RE: S.B. No. 512

S.D. 2

Honorable Calvin K.Y. Say
Speaker, House of Representatives
Twenty-Fifth State Legislature
Regular Session of 2009
State of Hawaii

Sir:

Your Committees on Energy & Environmental Protection and
Agriculture, to which was referred S.B. No. 512, S.D. 2, entitled:

"A BILL FOR AN ACT RELATING TO TAXATION,"

beg leave to report as follows:

The purpose of this bill is to change the ethanol facility
tax credit to the biofuel facility tax credit.

This bill also changes the amount of the biofuel facility tax
credit from thirty per cent of the qualified biofuel facility's
nameplate capacity to 40 cents per gallon if the nameplate
capacity is greater than five hundred thousand gallons but less
than fifteen million gallons. This bill further requires that the
nameplate capacity be determined by the facility owner and not
exceed the amount of production actually recorded during a
consecutive seven-day period multiplied by fifty-two.

Your Committees received testimony in support of this bill
from the United States Representative from the First District of
Hawaii, Pacific Biodiesel, Hawaiian Electric Company Utilities,
Hawaii Democratic Party, Maui Brewing Co., OmniGreen Renewables,
Blue Planet Foundation, Hawaii BioEnergy, and three individuals.
The Department of Business, Economic Development, and Tourism
submitted testimony supporting the intent of the bill and the
Department of Taxation took no position. Pacific West Energy LLC



testified in opposition to this bill. The Tax Foundation of Hawaii offered comments.

Your Committees find that Act 289, Session Laws of Hawaii 2000, established an investment tax credit to encourage the construction of an ethanol production facility in Hawaii. Act 140, Session Laws of Hawaii 2004, changed the credit from an investment tax credit to a facility tax credit.

Your Committees find that the existing tax credit was designed to address the capitalization costs of ethanol production and thus may not be entirely appropriate or applicable to other biofuel production. Biodiesel and ethanol, while both biofuels, are completely different products, with significantly different economics and markets. To simply add biodiesel to the carefully crafted Hawaii ethanol facility tax credit bears no relation to the relative economics of the two products and would not be good public policy, with one, ethanol, being carefully evaluated and the other, biodiesel, not being evaluated.

Producing ethanol is a much different and more costly process than producing biodiesel, involving a biological process, fermentation, along with distillation and dehydration. Biodiesel production is a simpler, lower cost process, involving separating vegetable oil into biodiesel and glycerin by adding a transesterification agent, usually methanol, and a catalyst. The capital and operating costs are completely different. For example, a fifteen million gallon per annum sugarcane-based ethanol facility has a capital cost (excluding cogeneration) of over \$50,000,000, more than \$3 per gallon of installed capacity. A fifteen million gallon biodiesel facility is likely to cost between \$7,500,000 and \$10,000,000, less than \$1 per gallon of installed capacity (the industry standard today is 50 cents per gallon of installed capacity, excluding seed crushing). Biodiesel plants are typically modular and prefrabricated and fit in forty-foot containers. Most of the capital for local biodiesel plants under the proposed measure would likely be for storage tanks for oil feedstocks.

Your Committees wish to convey to your Committee on Finance, to which this bill is referred, that it is not your Committees' intent for the tax credit incentive to be overly generous with respect to biofuel production. While it is your Committees' intent to support and expedite the implementation of biofuel production in Hawaii, your Committees do not support a total



subsidization of biofuel production through the biofuel facility tax credit.

Under the existing ethanol facility tax credit, an ethanol facility will not recover its capital costs from the credit over the eight years that the incentive would be paid. As proposed in this measure, a biodiesel producer could recover one hundred per cent of capital costs in refundable tax credits within two years. As a result, over the eight years, biodiesel producers would likely receive over four times their capital investment in refundable tax credits.

In addition, your Committees note that the Senate Draft of this bill added a requirement that the qualifying biofuel production facility be located within the State and utilize locally grown feedstock for at least seventy-five per cent of its production output. Your Committees find that this requirement may be constitutionally objectionable as a restraint of interstate commerce, by limiting the use of feedstock not grown in Hawaii.

As affirmed by the records of votes of the members of your Committees on Energy & Environmental Protection and Agriculture that are attached to this report, your Committees are in accord with the intent and purpose of S.B. No. 512, S.D. 2, and recommend that it pass Second Reading and be referred to the Committee on Finance.

Respectfully submitted on
behalf of the members of the
Committees on Energy &
Environmental Protection and
Agriculture,



CLIFT TSUJI, Chair



HERMINA MORITA, Chair



State of Hawaii
House of Representatives
The Twenty-fifth Legislature

Record of Votes of the Committee on Energy & Environmental Protection

Bill/Resolution No.: SB 512, SD2	Committee Referral: EEP / AGR, FIN	Date: 3-24-09		
<input type="checkbox"/> The committee is reconsidering its previous decision on the measure.				
The recommendation is to: <input checked="" type="checkbox"/> Pass, unamended (as is) <input type="checkbox"/> Pass, with amendments (HD) <input type="checkbox"/> Hold <input type="checkbox"/> Pass short form bill with HD to recommit for future public hearing (recommit)				
EEP Members	Ayes	Ayes (WR)	Nays	Excused
1. MORITA, Hermina M. (C)	✓			
2. COFFMAN, Denny (VC)	✓			
3. CABANILLA, Rida	✓			
4. CHANG, Jerry L.	✓			
5. CHONG, Pono	✓			
6. HAR, Sharon E.	✓			
7. HERKES, Robert N.				✓
8. ITO, Ken	✓			
9. LEE, Chris	✓			
10. LUKE, Sylvia	✓			
11. SAGUM, Roland D., III	✓			
12. CHING, Corinne W.L.		✓		
13. THIELEN, Cynthia	✓			
TOTAL (13)	11	1	0	1
The recommendation is: <input checked="" type="checkbox"/> Adopted <input type="checkbox"/> Not Adopted If joint referral, _____ did not support recommendation. committee acronym(s)				
Vice Chair's or designee's signature: <u>Denny Coffman</u>				
Distribution: Original (White) – Committee Duplicate (Yellow) – Chief Clerk's Office Duplicate (Pink) – HMSO				

