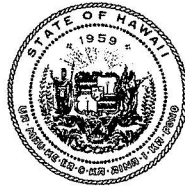


LINDA LINGLE
GOVERNOR

JAMES R. AIONA, JR.
LT. GOVERNOR



KURT KAWAFUCHI
DIRECTOR OF TAXATION

STANLEY SHIRAKI
DEPUTY DIRECTOR

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

PHONE NO: (808) 587-1510
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**HOUSE COMMITTEE ON FINANCE
TESTIMONY REGARDING HB 2421 HD 1
RELATING TO GOVERNMENT**

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

DATE: FEBRUARY 18, 2010

TIME: 4PM

ROOM: 308

This measure, among other things, modifies the current environmental response tax to be the "environmental response, energy and food security tax" and assigns it a rate of \$1.05. The proceeds of the tax are to be deposited in a number of special funds related to environmental response, energy security, energy systems development, and food security.

This measure also exempts the fuel tax for sales of commercial aviation fuel.

The Department of Taxation (Department) **opposes the tax provision in this legislation as a substantial tax increase.**

THIS BILL REPRESENTS A DRAMATIC TAX INCREASE—This legislation represents a large tax increase that will impact all Hawaii residents, including drivers and utility ratepayers. The Department is also strongly concerned with the timing of this legislation, because the state and nation are in a recession where taxpayers are worried about their finances. This tax is highly regressive and will impact the poor the most.

RECONSIDER THE AMENDMENTS FOR AVIATION FUEL—The Department also opposes exempting airlines from the fuel tax altogether as drafted in this measure. The Department points out that the effect of the current drafting exempts sales of all aviation fuel from the fuel tax entirely.

If the Legislature is concerned about increasing a tax on aviation fuel without running afoul of preemption, simply deposit the increase in aviation fuel taxes to the airports special fund. 49 US Code § 47133 restricts the local taxation on aviation fuel taxes. However, if the tax is assessed high enough up the chain (*i.e.*, taxes on a barrel of petroleum oil vs. refined aviation fuel), then the increase in tax would likely not run afoul of this preemption provision. The Department defers to the Attorney General on this last matter.

REVENUE IMPACTS—This measure provides the following revenue impacts:

- Revenue loss of \$3.7 million per year to the State Airport Fund due to the exemption for aviation fuel, as written;
- Revenue gains of \$12.1 million per year to the Energy Security Special Fund; \$2.2 million per year to the Energy Systems Development Special Fund; and \$7.7 million per year to the Agricultural Development and Food Security Special Fund.

LINDA LINGLE
GOVERNOR OF HAWAII



CHIYOME LEINAALA FUKINO, M.D.
DIRECTOR OF HEALTH

STATE OF HAWAII
DEPARTMENT OF HEALTH
P.O. Box 3378
HONOLULU, HAWAII 96801-3378

In reply, please refer to:
File:

COMMITTEE ON FINANCE

H.B. 2421, HD1, Relating to Government

Testimony of Chiyome Leinaala Fukino, M.D. Director of Health

February 18, 2010
4:00 P.M.

1 **Department's Position:** The Department of Health respectfully opposes this bill.

2 **Fiscal Implications:** Uncertain but substantial. The current \$0.05 tax generated \$792,848 in the first
3 half of FY10 and \$1,441,439 in FY 09, down from \$1,807,921 in FY 06.

4 **Purpose and Justification:** This measure proposes to raise the existing Environmental Response
5 Revolving Fund (ERRF) tax of 5 cents per barrel or fractional part of a barrel petroleum product to
6 \$1.05, and to allocate the new tax among the following special funds at the following rates; 5 cents to
7 the ERRF, 55 cents to the Energy Security Special Fund, 10 cents to the Energy Systems Development
8 Special Fund and, 35 cents to a new Agricultural Development and Food Security Special Fund.

9 The ERRF is very important for Hawaii's environment and should be protected. The
10 Department uses the ERRF to respond to and cleanup oil spills and hazardous materials releases to the
11 environment when the polluter does not. The fund also supports 40 positions in the DOH. See our
12 annual report: <http://gen.doh.hawaii.gov/sites/LegRpt/2010Rpt/128D%20and%20128E%20Report.pdf>.
13 Should the bill lead to reduced income allocated to the ERRF, the Department may not be able to carry
14 out its statutory duties. We are apprehensive about any measure that may lead to reducing the existing 5

1 cents per barrel tax rate allocated to the ERRF or the net income to the fund, and we ask the Legislature
2 to avoid those outcomes.

3 The DOH is uncertain and therefore concerned about the net effect of the bill. If passed, the
4 measure may result in higher income to the ERRF. On the other hand, if oil companies pass the tax
5 along to Hawaii consumers, already paying the highest gas prices in the nation, the additional fuel taxes
6 may depress consumption and may actually reduce ERRF revenues. Therefore, the fiscal implications
7 are uncertain.

8 We recognize that the goal of the Hawaii Clean Energy Initiative is to reduce Hawaii's use of oil
9 and coal from around 90% to 30% by 2030, and that in the long term ERRF income will decline and
10 alternative financing for spill response and program positions must be arranged. However, there is no
11 alternative now.

12 The bill increases taxes and increases the cost of living for Hawaii residents during a difficult
13 economic time.

14 We defer to the Departments of Business Economic Development and Tourism, Agriculture and
15 Taxation on the rest of the bill.

16 Thank you for the opportunity to testify in this important measure.

WRITTEN ONLY

TESTIMONY BY GEORGINA K. KAWAMURA
DIRECTOR, DEPARTMENT OF BUDGET AND FINANCE
STATE OF HAWAII
TO THE HOUSE COMMITTEE ON FINANCE
ON
HOUSE BILL NO. 2421, H.D. 1

February 18, 2010

RELATING TO GOVERNMENT

House Bill No. 2421, H.D. 1, establishes within the Department of Business, Economic Development and Tourism: 1) the Hawaii Economic Development Task Force to facilitate the accelerated adoption and completion of renewable energy projects, energy efficiency programs, agricultural infrastructure and development, and other measures to address Hawaii's energy and food security needs, and 2) the Hawaii Clean Energy Initiative Program to manage the State's transition to a clean energy economy.

In addition, House Bill No. 2421, H.D. 1, also establishes the Agricultural Development and Food Security special fund to receive funds from the environmental response and energy and food security tax as provided by Section 243-3.5 of the Hawaii Revised Statutes, legislative appropriations, earned interest, and funds from other sources. The special fund would be used to pay for expenses incurred to develop and implement activities to achieve food independence for the State.

As a matter of general policy, this department does not support the creation of any special fund that does not meet the requirements of Section 37-52.3, Hawaii Revised Statutes. Special funds should: 1) reflect a clear nexus between the benefits sought and charges made upon the users or beneficiaries of the program; 2) provide an appropriate means of financing for the program or activity; and 3) demonstrate the capacity to be financially self-sustaining. It is difficult to determine whether the sources of funding for the Food Security special fund reflect a clear nexus and whether the special fund will be self-sustaining.



**TESTIMONY OF
THE DEPARTMENT OF THE ATTORNEY GENERAL
TWENTY-FIFTH LEGISLATURE, 2010**

ON THE FOLLOWING MEASURE:

H.B. NO. 2421, H.D. 1, RELATING TO GOVERNMENT.

BEFORE THE:

Senate Committee on Finance

DATE: Thursday, February 18, 2010 **TIME:** 4:00 p.m.

LOCATION: State Capitol, Room 308

TESTIFIER(S): Mark J. Bennett, Attorney General, or
Nathan S.C. Chee, Deputy Attorney General

Chair Oshiro and Members of the Committee:

This bill contains provisions prohibited by federal law and may be unconstitutional as presently drafted.

Section 4 of this bill amends section 243-3.5, Hawaii Revised Statutes, to, among other things, impose the State's Environmental Response Tax on each barrel of petroleum product.¹ The bill also deposits a portion of this tax into the Energy Security Special Fund created by section 201-12.8, Hawaii Revised Statutes.

Part of section 4 imposes a tax on aviation fuel tax (see page 11, lines 19-21); however, section 5 of this bill states that "this chapter [243] shall not apply to the sale of a petroleum product that is used by a provider of commercial air transportation to transport persons or property." (see page 14, lines 1-3). Thus, the bill appears (1) internally inconsistent; and (2) it is unclear if "aviation fuel" used for noncommercial air transportation is subject to tax under this bill.

In addition, Title 49, section 47133 of the United States Code limits the use of local taxes on aviation fuel to airport purposes, as follows:

¹ The bill also renames this tax the "environmental response, energy and food security tax."

Testimony of the Department of the Attorney General
Twenty-Fifth Legislature, 2010
Page 2 of 3

(a) Prohibition.--Local taxes on aviation fuel (except taxes in effect on December 30, 1987) or the revenues generated by an airport that is the subject of Federal assistance may not be expended for any purpose other than the capital or operating costs of--

(1) the airport;

(2) the local airport system; or

(3) any other local facility that is owned or operated by the person or entity that owns or operates the airport that is directly and substantially related to the air transportation of passengers or property.

(b) Exceptions.--Subsection (a) shall not apply if a provision enacted not later than September 2, 1982, in a law controlling financing by the airport owner or operator, or a covenant or assurance in a debt obligation issued not later than September 2, 1982, by the owner or operator, provides that the revenues, including local taxes on aviation fuel at public airports, from any of the facilities of the owner or operator, including the airport, be used to support not only the airport but also the general debt obligations or other facilities of the owner or operator.

(c) Rule of construction.--Nothing in this section may be construed to prevent the use of a State tax on aviation fuel to support a State aviation program or the use of airport revenue on or off the airport for a noise mitigation purpose.

Accordingly, because H.B. No. 2421 may impose the State's Environmental Response Tax on "aviation fuel" and because the taxes are not used exclusively for the operating or capital costs of airports or airport systems, we believe that under the

Testimony of the Department of the Attorney General
Twenty-Fifth Legislature, 2010
Page 3 of 3

Supremacy Clause of the United States Constitution, this provision may be unconstitutional because it conflicts with the federal statute discussed above. We respectfully recommend that this bill be (1) amended to eliminate the tax on aviation fuel completely or, (2) amended to limit the use of taxes collected on aviation fuel to those listed in Title 49, section 47133 of the United States Code.

TAXBILLSERVICE

126 Queen Street, Suite 304

TAX FOUNDATION OF HAWAII

Honolulu, Hawaii 96813 Tel. 536-4587

SUBJECT: FUEL, Environmental response, energy and food security tax

BILL NUMBER: HB 2421, HD-1

INTRODUCED BY: House Committees on Energy and Environmental Protection and Agriculture

BRIEF SUMMARY: Amends HRS section 243-3.5 to rename the environmental response tax the environmental response, energy and food security tax. The tax on each barrel of petroleum product shall be 5 cents on each barrel of petroleum product that is aviation fuel and \$1.05 on each barrel that is not aviation fuel; provided that 5 cents of the tax, including all tax revenues received under this section from the sale of aviation fuel, shall be deposited into the environmental response revolving fund (HRS section 128D-2); 55 cents shall be deposited into the energy security special fund (HRS section 201-12.8); 10 cents shall be deposited into the energy systems development special fund (HRS section 304A-2169); and 35 cents shall be deposited into the proposed agricultural development and food security special fund (HRS section 141-_____).

Amends HRS section 243-7 to provide that the fuel tax shall not be applicable to the sale of petroleum product used by a provider of commercial air transportation to transport persons or property.

Adds a new section to HRS chapter 141 to establish an agricultural development and food security special fund which shall be used for: (1) the awarding of grants to farmers for agricultural production or processing activity; (2) the acquisition of real property for agricultural production or processing activity; (3) the improvement of real property, irrigation systems and transportation networks necessary to promote agricultural production or processing activity; (4) the purchase of equipment necessary for agricultural production or processing activity; (5) conducting of research on and testing of agricultural products and markets; (6) the promotion and marketing of agricultural products grown or raised in the state; and (7) any other activity intended to increase agricultural production or processing that may lead to reduced importation of food, fodder, or feed from outside the state.

Establishes the Hawaii economic development task force within the department of business, economic development and tourism (DBEDT) whose purpose is to facilitate the accelerated adoption and completion of renewable energy projects, energy efficiency programs, agricultural infrastructure and development. The task force shall consist of: (1) the director of DBEDT or designee; (2) the chairperson of the board of agriculture or designee; (3) the director of the office of planning or designee; (4) the chairperson of the board of land and natural resources or designee; (5) the dean of the UH college of tropical agriculture and human resources or designee; (6) the speaker of the house of representatives or designee; (7) the president of the senate or designee; and (8) a representative from each county's economic development board. Requires the task force to submit a report of its findings, recommendations, and proposed legislation to the 2012 legislature. The task force also shall submit a follow-up report to the 2012 legislature which shall include a description of the activities funded by the environmental response, energy, and food security tax, progress made toward energy and food

self-sufficiency, and additional action necessary to achieve energy and food self-sufficiency. The Hawaii economic development task force shall cease to exist on June 30, 2012.

Adds a new section to HRS chapter 196 to establish a Hawaii clean energy initiative program within DBEDT to manage the state's transition to a clean energy economy.

Adds a new section to HRS chapter 201 to establish a renewable energy branch within DBEDT to coordinate and promote renewable energy initiatives.

Establishes within DBEDT, the position of energy program coordinator and seven temporary positions to support the planning and renewable energy provisions of HRS chapters 196, 201, and 226.

Authorizes the governor to establish positions necessary to accomplish the management of those energy projects funded by federal grants, subject to the availability of federal funding for energy programs; provided that the governor shall submit a report to the legislature on all positions established as of December 31 and June 30 of each fiscal year that the positions exist and are occupied.

Makes various appropriations of unspecified amounts for the various programs, positions, and purposes of the measure.

EFFECTIVE DATE: July 1, 2010

STAFF COMMENTS: This measure proposes to rename the environmental response tax the environmental response, energy and food security tax. The legislature by Act 300, SLH 1993, enacted an environmental response tax of 5 cents per barrel on petroleum products sold by a distributor to any retail dealer or end user. This measure proposes to increase the tax to \$1.05 on barrels of petroleum product that are not aviation fuel and maintains the 5 cents per barrel on aviation fuel. Five cents of the tax on each barrel, including all tax revenues received under this section for the sale of aviation fuel, shall be deposited into the environmental response revolving fund; 55 cents of the tax on each barrel shall be deposited into the energy security special fund; 10 cents of the tax on each barrel shall be deposited into the energy systems development special fund; and 35 cents of the tax on each barrel shall be deposited into the agricultural development and food security special fund.

It should be remembered that the environmental response tax was initially adopted for the purpose of setting up a reserve should an oil spill occur on the ocean waters that would affect Hawaii's shoreline. The nexus was between the oil importers and the possibility that a spill might occur as the oil product was being imported into the state. Now that the fund has become a cash cow, lawmakers have placed other responsibilities on the fund, including environmental protection and natural resource protection programs, such as energy conservation and alternative energy development, to address concerns related to air quality, global warming, clean water, polluted runoff, solid and hazardous waste, drinking water, and underground storage tanks, including support for the underground storage tank program of the department of health.

It should be noted that the enactment of the barrel tax for the environmental response revolving fund is the classic effort of getting one's foot in the door with a palatable and acceptable tax rate with the possibility of increasing the tax rate once it is enacted which is what is being proposed by this measure. Because the tax is imposed at the front end of the product chain, the final consumer does not know that

the higher cost of the product is due to the tax. Thus, there is little, if any, accountability between the lawmakers who enacted the tax and the vast majority of the public that ends up paying the tax albeit indirectly. Proponents ought to be ashamed that they are promoting a less than transparent tax increase in the burden on families all in the name of environmental protection and food security. This proposal is nothing more than another bureaucratic boondoggle that merely expands the size of government at the expense of working families and small businesses struggling to survive in this economy and trying to make ends meet. While the proposed measure establishes a Hawaii economic development task force, a Hawaii clean energy initiative program, a renewable energy branch, as well as additional positions for DBEDT for the stated purposes, it is questionable why these goals are not addressed by the "qualified experts" of DBEDT. The measure also establishes yet another special fund - the agricultural development and food security special fund.

In addition, it should be remembered that the State Auditor has singled out the environmental response revolving fund as not meeting the criteria established and recommended that it be repealed. The Auditor criticized the use of such funds as they hide various sums of money from policymakers as they are not available for any other use and tend to be tacitly acknowledged in the budget process. More importantly, it should be recognized that it is not only the users of petroleum products who benefit from a cleaner environment, but it is the public who benefits. If this point can be accepted, then the public, as a whole, should be asked to pay for the clean up and preservation of the environment.

Funds deposited into a revolving fund are not subject to close scrutiny as an assumption is made that such funds are self-sustaining. It should be remembered that earmarking of funds for a specific program represents poor public finance policy as it is difficult to determine the adequacy of the revenue source for the purposes of the program. To the extent that earmarking carves out revenues before policymakers can evaluate the appropriateness of the amount earmarked and spent, it removes the accountability for those funds. There is no reason why such programs should not compete for general funds like all other programs which benefit the community as a whole. And while the legislation describes various activities for which the funds in the new special fund can be expended, it is the newly establish economic development task force that will specify the types of programs that will benefit from the fund.

Rather than perpetuating the problems of the barrel tax, it should be repealed and all programs that are funded out of the environmental response fund should be funded through the general fund. At least program managers would then have to justify their need for these funds. By continuing to special fund these programs, it makes a statement that such environmental programs are not a high priority for state government. This sort of proliferation of public programs needs to be checked as it appears to be growing out of hand and at the expense of the taxpayer.

If it is a matter that no funds in this fiscal environment have been set aside to address federal environmental mandates, then consideration should be given to first prioritizing how the money that is already in the fund is to be spent and then set a sunset deadline by which these programs are to be general-fund financed and the tax repealed. The measure also seems to imply that the funds in the new special fund will be used to leverage federal funds through grants and other appropriations. If that is the case, the legislature already has the ability to appropriate state funds to be used as matching funds for federal aid and grants.

Lawmakers should not only be concerned about the impact that the increase in the barrel tax will have on motor fuel, but on the cost of living in general. Because this is a tax at the front end of the consumer

chain, it will be imbedded in everything that is consumed in the state. And because it is at the front end, it will tend to pyramid the cost of goods and services as each business in the chain adds his or her mark-up to an increased base price. Thus, now is hardly a time to add such a tax that will cause prices to rise at the retail level because its imposition is at the raw product level.

Given that this proposal amounts to a tax increase, can its sponsors hold their heads high when they return to their constituents and tell them that while their colleagues rant and rave about the collusive petroleum industry ripping off motorists at the pump that they themselves contributed to not only the high cost of gasoline but also the high cost of electricity to light our homes to the pricey take-out lunch because the cost of that energy will increase even more with this proposal. While lawmakers would like to preen their feathers that they are oh-so eco friendly and environmentally concerned, they do so at a cost to the taxpayer. While tax increases are unacceptable in these difficult times, this proposal is especially reprehensible as it hides behind the skirt of being environmentally concerned and it hides behind the shadow of businesses that will end up with the blame of ripping off the consumer yet again

Proponents of this measure point out that this measure will help Hawaii become more energy self-sufficient and we will stop sending more and more money out of the state because Hawaii is so dependent on fossil fuels. On the other hand, they also point to the fact that the U.S. Department of Energy has designated Hawaii as the number one state for the potential of shifting its energy resources to renewable. If that is the case, then there should be federal funds available to build the necessary infrastructure for renewable energy sources. While making the shift to renewable energy sources, as well as providing support for sustainable agriculture in the state is nice to have, it would come at a terrible price especially in the current economy.

Not only does this measure represent a major tax increase at a bad economic time, it also creates another huge public bureaucracy riddled with a plethora of new programs. Given the current struggle over the state's budget, this is not a time to expand government. If advocates of this measure want to adopt this new public bureaucracy, then they should be asked what the state can do without from its current panoply of programs and services.

Last year, a similar measure that increased the tax to \$1 was passed by the legislature and vetoed by the governor. The governor's veto message stated that "it raises taxes on Hawaii residents and businesses by an estimated \$31 million per year at a time when the community can least afford these taxes. Just like the many struggling families and business owners across our state, we must prioritize expenditures on a budget and then learn to live within our means." Clearly this measure, which would expand government along with additional taxes and fees, is totally unacceptable.

For a legislature that is controlled by elected officials who prattle that they are advocates for the poor, this bill will hurt the poor the most. For elected officials who whine over the cost of affordable housing or better yet bemoan the homeless problem, this bill will ensure that even more residents will end up living on the beach. Sure it is fashionable to be "green" and advocate for sustainability, but one has to ask at what price? Unless lawmakers are willing to surrender their pet programs in the name of sustainability and food security, this measure just adds to the burden of taxes of the people of Hawaii. While lawmakers scrounge the bottom of the barrel to find a solution to end "furlough Fridays," are they more than willing to entertain such a huge tax increase for something other than education?



LIFE OF THE LAND

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COMMITTEE ON FINANCE

Rep. Marcus R. Oshiro, Chair

Rep. Marilyn B. Lee, Vice Chair

DATE: Thursday, February 18, 2010

TIME: 4:00 P.M.

PLACE: Conference Room 308

Re: HB 2421 HD1: RELATING TO GOVERNMENT

OPPOSE

Aloha Chair Oshiro, Vice Chair Lee and Members of the Committees

Description: HB 2421 Authorizes taxes to promote local food and energy.

Life of the Land is Hawai'i's own energy, environmental and community action group advocating for the people and `aina for 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.

HB 2421 is well intentioned but somewhat misguided.

ECONOMIC IMPACT: FUEL SUBSTITUTION

Taxing oil but not coal and not tropical biofuels will cause oil to be more expensive relative to coal and tropical biofuels and may lead to fuel substitution. Recognizing that a \$1/barrel tax is roughly 1.5%, imposing a 1.5% tax on all imported fossil fuel and tropical biofuels makes more sense.

ECONOMIC IMPACT: IMPORT SUBSTITUTION

Picture oil and raw material stockpiled at a foreign dock. If half of the products are turned into finished goods at the dock, all of it is shipped to Hawai'i, and at our dock the other half are made into the same finished goods, the tax would be imposed only on the finished goods made in Hawaii.

Those with embedded fossil fuel would not be taxed. Therefore the bill would encourage export of manufacturing. For example, it would be better to ship in soda from Los Angeles that to ship in the plastic bottles and the liquid here. If we put the soda in the bottle the government would tax us for using oil, but would not tax the same manufacturer putting the same liquid in the same bottle in L.A.

ECONOMIC JUSTICE

Hawaii is in a recession. There are many working class families who commute longer distances to get to work: from Kapolei and Ewa Beach to Downtown and Waikiki, and from Hilo to Kona. It is easy for someone downtown to say that a 1.5% fuel tax will be hidden in fuel price volatility. But the fact remains that we are in a recession, governmental programs are being slashed, taxes are being raised, and good jobs are difficult to find. If a new tax is imposed it should become effective next year not this year.

INTER-ISLAND CABLE

Oahu has a peak load of about 1200 megawatts (MW). According to the utility research group, the Electric Power Research Institute (EPRI), Oahu could generate all of its electricity needs from wave power. Alternatively, Oahu could generate all of its energy needs from Ocean Thermal Energy Conversion. Or Oahu could have large wind farms, rooftop micro-wind, solar heat and solar electric (photovoltaic) panels and provide large portions of its electrical needs.

The Hawaii Clean Energy Initiative (HCEI) calls for Lanai and Molokai to allow two hundred (200) 41-story wind towers in a multi-billion dollar scheme to interconnect island grids together. HB 2421 endorses the HCEI and thus endorses this inter-island cable.

HCEI Energy Agreement: "The Hawaiian Electric Companies are committed to integrating the maximum attainable amount of wind energy on their systems. ...To achieve substantially greater use of wind power on Oahu where most of the electric power in the State is consumed, it is **necessary** to transmit the wind power produced on the other islands by undersea cable systems to Oahu."¹

VOG

VOG is a very serious issue not just on the Big Island. Utilities must account for how much their emissions increases air pollution on top of what the volcano produces. HECO has proposed ignoring volcanic emissions in siting new power plants and controlling their emissions:

HCEI Agreement: "Include Volcano National Park volcanic air emissions in the background baseline for the Regional Haze Program. EPA's Regional Haze Rules, designed to protect visibility in National Parks, are ambiguous as to the effect of

¹ <http://hawaii.gov/dbedt/info/energy/agreement/signed2008oct20.pdf>

naturally occurring haze. Controlling visibility impairing emissions from Company units would be fruitless and very expensive.”

HB 2421 would have the State endorse this approach.

ENERGY EFFICIENCY

The State Legislature recognized that there is an inherent conflict in having one company trying to get customers to reduce their electricity use thru energy efficiency, while at the same time having the same company getting higher profits from selling customers more electricity. What made the utility want to do both is that NRDC convinced various states to have ratepayers make payments to stockholders for implementing these opposite policies. This has resulted in fairly small levels of energy efficiency and generous payments to stockholders.

The State Legislature authorized the Public Utilities Commission to establish an Energy Efficiency Utility. The Public Utilities Commission did just that in 2007.²

Now Hawaii has different types of utilities: HECO, MECO, HELCO and KIUC sell electricity. Science Applications International Corporation (SAIC) assumed responsibility for the Hawaii Energy Efficiency Programs last summer.

HB 2421 would for the first time commit the State towards implementation of the Hawaii Clean Energy Initiative (HCEI) which calls for HECO to skim off lucrative parts of the energy efficiency programs.

The Energy Agreement states: “The parties believe that the utilities should be allowed to apply for and will support the utilities continued provision of energy efficiency programs to commercial and industrial customers.”

CLEAN ENERGY

Remarkably, “clean energy” is not defined by the amount of toxics generated nor the amount of greenhouse gases released. Rather the term is used similar to Smart Growth, Healthy Forests, Clear Skies, etc. It sounds great. Its catchy.

CLIMATE CHANGE

Climate change is caused by the emission of greenhouse gases into the atmosphere and the oceans. Different fuels have different impacts depending upon the total amount of greenhouse gas emissions associated with the total life cycle of the fuel involved.

² THE COMMISSION ORDERS: ... 4. All of the HECO Companies' Energy Efficiency DSM programs shall transition from the HECO Companies to the Non-Utility Market Structure, by January 2009, unless otherwise ordered by the commission. The HECO Companies' Load Management programs shall be excluded from the third-party administrator's area of responsibility. Decision and Order No.23258, Docket 2005-0069, dated February 13, 2007, pages 143-44

The two worst fuels in terms of greenhouse gas emissions are coal and tropical biofuels grown by slash and burn techniques which are destroying the world's remaining rainforests. These fuels would not be taxed.

STATE LAW PROMOTES COAL

Under state law, but not using common sense, coal can be a renewable fuel:

HRS §269-91 (Renewable Portfolio Standards) "Renewable electrical energy" means ...Electrical energy savings brought about by: ...the use of ...rejected heat from co-generation and combined heat and power systems

HRS §243-1 (Fuel Tax Law) "Alternative fuel" means ...coal-derived liquid fuels

The Hawaii Clean Energy Initiative (HCEI) states that "clean energy" includes the "renewable energy" as it is defined under state law.

STATE LAW PROMOTES TROPICAL BIOFUELS

Under state law, but not using common sense, tropical biofuels created by decimating tropical rainforests and displacing native peoples and ecosystems are always defined to be a renewable fuel:

HRS §269-91 (Renewable Portfolio Standards) "Renewable energy" means ...Biofuels

HRS §243-1 (Fuel Tax Law) "Alternative fuel" means methanol, denatured ethanol, and...biodiesel

The Hawaii Clean Energy Initiative (HCEI) states that "clean energy" includes the "renewable energy" as it is defined under state law.

Mahalo

Henry Curtis
Executive Director

Testimony of The Nature Conservancy of Hawai'i
Supporting with Amendments H.B. 2421, HD1 Relating to Government
House Committee on Finance
Thursday, February 18, 2010, 4:00PM, Rm. 308

The Nature Conservancy **supports with the attached amendments** H.B. 2421, HD1, particularly the imposition of a reasonable tax increase on imported petroleum as a smart way to support Hawaii's energy security goals, incentivize innovation and change, promote food security, and help us cope with the effects of climate change.

We recommend the Committee amend the bill (see attached) to require a small portion, such as 10%, of the barrel fee be used to fund the Climate Change Task Force established by Act 20 (Session Laws 2009), and to plan for and help and communities and our natural resources cope with the inevitable challenges of climate change caused by emissions from burning fossil fuels. We do agree that large the majority of the revenue from the barrel fee should be used to support the state's transition to clean energy, greenhouse gas emission reduction, and energy and food security.

Climate change is an imminent and unprecedented threat to both natural systems (e.g., forests, coastlines, coral reefs, wetlands) and to every person in Hawai'i that—whether they know it or not—depends on services from the natural environment for their livelihoods, health and welfare. Scientists have examined the evidence and rapid climate change is real; it is clearly caused by human activity; it is already a problem for habitat for plants and animals; and, if sources of CO₂ are not dramatically reduced, climate change could well have catastrophic results for people and their relationship with the natural environment.

Even if we drastically reduce CO₂ emissions now, we will still feel the effects of climate change. In Hawai'i, science is indicating that this may include:

- More frequent and more severe storms;
- Overall, less rainfall and therefore less fresh water;
- Higher temperatures that may affect the health of forested watersheds;
- Climatic conditions even more conducive to invasive plants, insects and diseases;
- Sea level rise and high wave events that will harm coastal areas and cause seawater infiltration into groundwater systems; and
- Ocean acidification that will inhibit the growth of coral reefs.

In addition, to achieving energy security through vastly greater energy efficiency, technology and renewable energy development, we must plan and implement mitigative and adaptive measures to ensure the resilience of our natural and human systems.

Proposed amendments attached.

BOARD OF TRUSTEES

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[Proposed amendments from The Nature Conservancy highlighted]

HOUSE OF REPRESENTATIVES
TWENTY-FIFTH LEGISLATURE, 2010
STATE OF HAWAII

H.B. NO. 2421
H.D.2

A BILL FOR AN ACT

RELATING TO GOVERNMENT.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:

PART I

SECTION 1. The purpose of this Act is to:

- (1) Promote economic development for local food and energy businesses by establishing necessary funding, guidance, and infrastructure;
- (2) Ensure Hawaii is energy and food self-sufficient and sustainable to the maximum extent feasible; and
- (3) Plan for and implement measures to help Hawaii's natural resources and humankind adapt and be resilient to the inevitable challenges brought on by climate change caused by carbon dioxide and other greenhouse gas emissions from burning fossil fuels.

Hawaii is at a crossroads. As the most geographically isolated state in the country, we are dangerously dependent on imports for basic food and energy needs. We import about eighty-five per cent of our food and ninety-five per cent of our energy. It has been estimated that Hawaii exported \$8,600,000,000 for food and oil in 2008, and every dollar exported is a lost opportunity to support and invest in local business. Our dependence on imports also exposes residents and businesses to volatile food and energy costs as oil prices fluctuate.

In addition, the mass consumption of fossil fuels, driven by our dependence on food and energy imports, contributes to climate change and the deterioration of the environment, and anticipated conditions such as more severe storm events, overall less rainfall, warmer temperatures that may favor invasive species, sea level rise, and ocean acidification that hampers coral growth. These climate changes will likely impose major but not fully understood costs and other impacts on Hawaii's people and the natural capital we depend upon to support our lives in the middle of the Pacific. Nowhere is it more obvious than in remote islands like Hawaii that our lives and economy

are intertwined with the health and function of the natural world around us.

Although Hawaii is home to renewable energy resources like solar, wind, ocean, and geothermal, we as a community have not taken full advantage of alternative energy and energy efficiency solutions to make our State more energy independent. As an example, despite year-round sunshine, only thirty per cent of Hawaii's residents have solar water heaters.

Similarly, many acres of highly productive agricultural lands are not being farmed. Currently, Hawaii has a fresh supply of produce for no more than ten days. Ninety per cent of the beef, sixty-seven per cent of fresh vegetables, sixty-five per cent of fresh fruits, and seventy per cent of milk consumed in this state are imported. While Hawaii may never produce one hundred per cent of its food, the risks and costs to society by this dependence on imported food cannot be ignored.

Like energy, producing local food would reduce Hawaii's demand for fossil fuels, keep money in our community, and decrease the vulnerability to food supply disruptions caused by natural disasters or worldwide economic events.

Now is the time for bold action to squarely address Hawaii's energy and food requirements and plan for and address the inevitable effects of climate change. It will require long-term commitment, dedication, and investment by government, the private sector, and Hawaii's people to dramatically shift our present course of importing food and energy toward a more energy independent and agriculturally sustainable society. As a state and as a people, we must decide whether we will continue to be dependent on external sources for our basic needs, or whether we will build, invest in, and develop the capacity to become food and energy independent, as well as ensure the resiliency of our communities and natural environment to the inevitable impacts of climate change.

The legislature finds that it is in the best interests of Hawaii's people to build the capacity we need to become energy and food self-sufficient, and protect the health and function of our environment. As discussed in the Hawaii 2050 Sustainability Plan and Hawaii Clean Energy Initiative, Hawaii has all the necessary assets to significantly improve sustainability and independence over the next twenty years if appropriate personnel resources and sustainable funding are used wisely. To succeed, the State must ensure that our long-term strategy is well-resourced, coordinated, and focused.

This Act creates a Hawaii economic development task force to accelerate and support public and private efforts to make Hawaii energy and food self-sufficient, consistent with the Hawaii 2050 Sustainability Plan, the Hawaii Clean Energy

Initiative, and other government and community planning efforts. The Hawaii economic development task force shall recommend priorities for government agencies within the executive branch and the legislature in determining how funds may be allocated, reviewing an existing or developing an overall road map to implement and achieve the purpose of this Act, and identifying the economic development, workforce, and consumer education issues relating to the production of food and energy.

The legislature intends that the Hawaii economic development task force take an interdisciplinary approach to seek the most efficient and effective pathways for interagency coordination. The Hawaii economic development task force shall work collaboratively with all levels of government and the private and nonprofit sectors to address water, land, regulatory, and natural resource issues intertwined with food and fuel production. Such an approach ensures that energy and food policy development is integrated within the overall economic, social, environmental, and cultural aspects of society. With an understanding of these overlapping goals and resources, our State can maximize the opportunities to ensure food and energy security for generations to come.

The Act also establishes a clean energy initiative to manage the State's transition to a clean energy economy, an agricultural development and food security special fund to fund activities intended to increase agricultural production or processing that may lead to reduced importation of food, fodder, or feed from outside the State, and establishes a renewable energy branch in the department of business, economic development, and tourism, to coordinate and promote renewable energy initiatives.

The legislature finds that undertaking this important task of energy and food security and natural resource protection requires substantial financial resources. An investment and long-term commitment by the State must be made. To that end, this Act also increases the per-barrel tax on petroleum products under the environmental response, energy, and food security tax, formerly known as the environmental response tax, and appropriates funds from that tax for the energy and food security, and natural resource protection initiatives established by this Act.

PART II
ENVIRONMENTAL RESPONSE, ENERGY, AND FOOD SECURITY TAX

SECTION 2. Section 128D-2, Hawaii Revised Statutes, is amended to read as follows:

"§128D-2 Environmental response revolving fund; uses.

(a) There is created within the state treasury an environmental response revolving fund, which shall consist of moneys appropriated to the fund by the legislature, moneys paid to the fund as a result of departmental compliance proceedings, moneys paid to the fund pursuant to court-ordered awards or judgments, moneys paid to the fund in court-approved or out-of-court settlements, all interest attributable to investment of money deposited in the fund, moneys ~~[generated by]~~ deposited in the fund from the environmental response, energy, and food security tax [established in] pursuant to section 243-3.5, and moneys allotted to the fund from other sources~~;~~ ~~provided that when the total balance of the fund exceeds \$20,000,000, the department of health shall notify the department of taxation of this fact in writing within ten days. The department of taxation then shall notify all distributors liable for collecting the tax imposed by section 243-3.5 of this fact in writing, and the imposition of the tax shall be discontinued beginning the first day of the second month following the month in which notice is given to the department of taxation. If the total balance of the fund thereafter declines to less than \$3,000,000, the department of health shall notify the department of taxation which then shall notify all distributors liable for collecting the tax imposed by section 243-3.5 of this fact in writing, and the imposition of the tax shall be reinstated beginning the first day of the second month following the month in which notice is given to the department of taxation].~~

(b) Moneys from the fund shall be expended by the department for response actions and preparedness, including removal and remedial actions, consistent with this chapter; provided that the revenues generated by the ~~["environmental response tax" and]~~ environmental response, energy, and food security tax deposited into the environmental response revolving fund:

- (1) Shall ~~[also]~~ be used:
 - (A) For oil spill planning, prevention, preparedness, education, research, training, removal, and remediation; and
 - (B) For direct support for county used oil recycling programs; and
 - ~~[(C) For deposit into the energy security special fund, established under section 201-12.8, as may be appropriated by the legislature; and]~~
- (2) May Shall also be used to support environmental protection and natural resource protection programs, including ~~[but not limited to]~~ energy conservation and alternative energy development, and to address

concerns related to air quality, ~~global warming~~
climate change, watershed protection and management,
coastal and marine protection and management, clean
water, polluted runoff, solid and hazardous waste,
drinking water, and underground storage tanks,
including support for the underground storage tank
program of the department and funding for the
acquisition by the State of a soil remediation site
and facility."

SECTION 3. Section 201-12.8, Hawaii Revised Statutes, is amended to read as follows:

"~~[+]§201-12.8[+]~~ **Energy security special fund; uses.** (a) There is created within the state treasury an energy security special fund, which shall consist of:

- (1) The portion of the environmental response, energy, and food security tax specified under section 243-3.5;
- ~~[(+)]~~ (2) Moneys appropriated to the fund by the legislature;
- ~~[(+)]~~ (3) All interest attributable to investment of money deposited in the fund; and
- ~~[(+)]~~ (4) Moneys allotted to the fund from other sources.

(b) ~~[Moneys]~~ Subject to legislative appropriation, moneys from the fund ~~[shall]~~ may be expended by the department of business, economic development, and tourism for the following purposes and ~~[shall be]~~ used for no other purposes except for those set forth in this section:

- (1) To support ~~[its]~~ the Hawaii clean energy initiative program, including its energy division and projects that ensure dependable, efficient, and economical energy, promote energy self-sufficiency, and provide greater energy security for the State; [and]
- (2) To fund the renewable energy facilitator pursuant to section 201-12.5 and any other positions necessary for the purposes of paragraph (1) as determined by the legislature~~[-]~~; and
- (3) To fund, to the extent possible, the greenhouse gas emissions reduction task force, climate change task force, grants-in-aid to the economic development boards of each county, and grants-in-aid to economic development agencies of each county to meet the stated objectives of the Hawaii clean energy initiative program.

(c) The department of business, economic development, and tourism shall submit a report to the legislature no later than twenty days prior to the convening of each regular session, on the status and progress of existing programs and activities, and

the status of new programs and activities funded by the energy security special fund. The report shall also include the spending plan of the energy security special fund, all expenditures of energy security special fund moneys, the targeted markets including why those markets were selected and who will be served and why, the specific objectives of the expenditures, and measurable outcomes."

SECTION 4. Section 243-3.5, Hawaii Revised Statutes, is amended as follows:

1. By amending its title and subsection (a) to read:

"§243-3.5 Environmental response, energy, and food security tax; uses. (a) In addition to any other taxes provided by law, subject to the exemptions set forth in section 243-7, there is hereby imposed [~~at times provided in section 128D-2~~] a state environmental response, energy, and food security tax of [~~5 cents~~] \$1.05 (one dollar and five cents) on each barrel or fractional part of a barrel of petroleum product sold by a distributor to any retail dealer or end user, other than a refiner, of petroleum product; provided that each barrel or fractional part of a barrel of petroleum product sold by a distributor to any retail dealer or end user, other than a refiner, of petroleum product that is aviation fuel shall be subject to a state environmental response, energy, and food security tax of 5 cents; provided further that of the tax collected pursuant to this subsection:

- (1) 5 cents of the tax on each barrel, including all tax revenues received under this section for the sale of aviation fuel shall be [~~used pursuant to section 128D-2 to address concerns relating to drinking water.~~] deposited into the environmental response revolving fund established under section 128D-2;
- (2) ~~55~~ 50 cents of the tax on each barrel shall be deposited into the energy security special fund established under section 201-12.8;
- (3) 10 cents of the tax on each barrel shall be deposited into the energy systems development special fund established under section 304A-2169; ~~and~~
- (4) ~~35~~ 30 cents of the tax on each barrel shall be deposited into the agricultural development and food security special fund established under section 141-
; and
- (5) 10 cents of the tax on each barrel shall be deposited into the climate change resilience and adaptation special fund established under section 195D- .

The tax imposed by this subsection shall be paid by the distributor of the petroleum product."

2. By amending subsection (c) to read:

"(c) Notwithstanding section 248-8 to the contrary, the environmental response, energy, and food security tax collected under this section shall be paid over to the director of finance for deposit ~~[into the environmental response revolving fund established by section 128D-2.]~~ as provided in subsection (a)."

SECTION 5. Section 243-7, Hawaii Revised Statutes, is amended to read as follows:

"§243-7 Tax not applicable, when. (a) This chapter requiring the payment of license fees shall not be held or construed to apply to fuel imported into the State in interstate or foreign commerce while and so long as such fuel is beyond the taxing power of the State, nor to any such fuel exported or sold to the government of the United States or any department thereof for official use of the government, nor to any fuel exported or sold to another licensed distributor; but every distributor shall be required to report such imports, exports, and sales as provided by this chapter and in such detail as the department of taxation shall require.

(b) This chapter shall not apply to the sale of liquid fuel sold or used in the State for ultimate use by an intra-county ferry service that serves a county with a population of less than five hundred thousand residents and that includes at least three islands inhabited by permanent residents.

(c) This chapter shall not apply to the sale of petroleum product that is used by a provider of commercial air transportation to transport persons or property."

SECTION 6. Section 304A-2169, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

"(b) The special fund shall be funded by:

(1) Appropriations from the legislature; ~~[and]~~

(2) The portion of the environmental response, energy, and food security tax specified under section 243-3.5; and

~~[(+)]~~ (3) Investment earnings, gifts, donations, or other income received by the ~~[+]Hawaii natural energy[+]~~ institute."

PART III

HAWAII ECONOMIC DEVELOPMENT TASK FORCE

SECTION 7. (a) There is established the Hawaii economic development task force within the department of business, economic development, and tourism for administrative purposes. The purpose of the Hawaii economic development task force shall be to facilitate the accelerated adoption and completion of renewable energy projects, energy efficiency programs, agricultural infrastructure and development, and other measures

to meet the purposes of this Act. The Hawaii economic development task force shall develop and maintain a broad overview of energy and food security issues that apply an interdisciplinary approach to ensure that Hawaii's energy and food policy and program development is integrated within the overall economic, social, environmental, and cultural aspects of society. The Hawaii economic development task force shall, with the assistance of the department of business, economic development, and tourism:

- (1) Identify and review each state and county agency's policy objectives, mandates, organizational structure, and resources to address energy and food security issues;
 - (2) Identify all federal and private funds available to the State and counties to address energy and food security issues;
 - (3) Identify effective measures for interagency cooperation, coordinate efforts with the counties, and bolster public and private sector partnerships to achieve the objective of energy and food security;
 - (4) Identify existing programs and agreements addressing energy and food security that may be enhanced through legislation;
 - (5) Investigate alternative institutional mechanisms to promote the efficient execution and implementation of a multi-year strategy to achieve energy and food security;
 - (6) Investigate the streamlining of administrative processes to accelerate and achieve energy and food security;
 - (7) Provide an appropriate forum for all affected or interested parties to address energy and food security issues;
 - (8) Recommend appropriate legislation resulting from its findings to improve, accelerate, and achieve the objective of energy and food security;
 - (9) Review whether:
 - (A) The apportionment of the environmental response, energy, and food security tax among the funds listed under section 243-3.5, Hawaii Revised Statutes, is appropriate;
 - (B) The apportionment should be changed; and
 - (C) Any additional special, trust, or revolving fund should receive a share of the tax;
- and
- (10) Perform any other function necessary to effectuate the purposes of this part.

(b) The Hawaii economic development task force shall consist of the following members:

- (1) The director of business, economic development, and tourism or the director's designee, who shall chair the Hawaii economic development task force;
- (2) The chairperson of the board of agriculture or the chairperson's designee;
- (3) The director of the office of planning or the director's designee;
- (4) The chairperson of the board of land and natural resources or the chairperson's designee;
- (5) The dean of the University of Hawaii college of tropical agriculture and human resources or the dean's designee;
- (6) The speaker of the house of representatives or the speaker's designee;
- (7) The president of the senate or the president's designee; and
- (8) A representative from each private county economic development board.

(c) The Hawaii economic development task force's members shall serve without compensation but shall be reimbursed for expenses, including travel expenses, necessary for the performance of their duties.

(d) In the performance of its duties, the Hawaii economic development task force shall consult with appropriate private, nonprofit, community, and government stakeholders.

(e) The department of business, economic development, and tourism may contract with the University of Hawaii for any services to support the work of the Hawaii economic development task force.

(f) The Hawaii economic development task force shall submit a report of its findings and recommendations, including any proposed legislation, to the legislature no later than twenty days prior to the convening of the regular session of 2011.

The task force also shall submit a follow-up report to the legislature no later than twenty days prior to the convening of the regular session of 2012. The report shall include a description of the activities funded by the environmental response, energy, and food security tax, progress made toward energy and food self-sufficiency, and additional action necessary to achieve energy and food self-sufficiency.

(g) The Hawaii economic development task force shall cease to exist on June 30, 2012.

SECTION 8. Notwithstanding section 201-12.8(b), Hawaii Revised Statutes, there is appropriated out of the energy security special fund the sum of \$ _____ or so much thereof as may be necessary for fiscal year 2010-2011 for the purpose of supporting the work of the Hawaii economic development task force. The appropriation shall be made from the portion of the environmental response, energy, and food security tax that is deposited into the energy security special fund.

The sum appropriated shall be expended by the department of business, economic development, and tourism for the purposes of this part.

**PART IV
AGRICULTURAL DEVELOPMENT AND FOOD SECURITY**

SECTION 9. Chapter 141, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

"§141- Agricultural development and food security special fund; establishment. (a) There is established within the state treasury the agricultural development and food security special fund.

(b) The following shall be deposited into the special fund:

- (1) The portion of the environmental response, energy, and food security tax specified under section 243-3.5;
- (2) Any appropriation by the legislature into the special fund;
- (3) Any grant or donation made to the special fund; and
- (4) Any interest earned on the balance of the special fund.

(c) Subject to legislative appropriation, moneys in the special fund may be expended for the following purposes:

- (1) The awarding of grants to farmers for agricultural production or processing activity;
- (2) The acquisition of real property for agricultural production or processing activity;
- (3) The improvement of real property, irrigation systems, and transportation networks necessary to promote agricultural production or processing activity;
- (4) The purchase of equipment necessary for agricultural production or processing activity;
- (5) The conduct of research on and testing of agricultural products and markets;
- (6) The promotion and marketing of agricultural products grown or raised in the state; and

(7) Any other activity intended to increase agricultural production or processing that may lead to reduced importation of food, fodder, or feed from outside the state.

(d) The department of agriculture shall submit a report to the legislature no later than twenty days prior to the convening of each regular session, on the status and progress of existing programs and activities, and the status of new programs and activities funded under the agricultural development and food security special fund. The report shall also include the spending plan of the agricultural development and food security special fund, all expenditures of agricultural development and food security special fund moneys, the targeted markets including why those markets were selected and who will be served and why, the specific objectives of the expenditures, and measurable outcomes."

SECTION 10. There is appropriated out of the agricultural development and food security special fund the sum of \$ _____ or so much thereof as may be necessary for fiscal year 2010-2011 for the purpose of supporting the following projects:

- (1) \$ _____ for Varroa mite control and eradication efforts;
- (2) \$ _____ for the operation of pest inspection, quarantine, eradication, biosecurity, and monitoring programs, related facilities, and the execution of emergency remedial measures when pests are detected in the course of inspection and quarantine activities by the department of agriculture;
- (3) \$ _____ for the expansion of the food safety and security program administered by the department of agriculture;
- (4) \$ _____ for the livestock revitalization and food security program under chapter 155D, Hawaii Revised Statutes;
- (5) \$ _____ for improvements to the lower Hamakua ditch in Hawaii county;
- (6) \$ _____ for the construction of an agricultural water main distribution pipeline in the upcountry Maui watershed;
- (7) \$ _____ for the construction of the Kealahou pipeline in the upcountry Maui watershed; and
- (8) \$ _____ for the planning phase of the state agricultural water use and development plan.

The sum appropriated shall be expended by the department of agriculture for the purpose of this section. Any part of the

sum appropriated in this section may be used to match federal funds.

PART V
HAWAII CLEAN ENERGY INITIATIVE

SECTION 11. Chapter 196, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

"§196- Hawaii clean energy initiative program. (a)

There is established, within the department of business, economic development, and tourism, a Hawaii clean energy initiative program to manage the State's transition to a clean energy economy. The clean energy program shall design, implement, and administer activities that include:

- (1) Strategic partnerships for the research, development, testing, deployment, and permitting of clean and renewable technologies;
- (2) Engineering and economic evaluations of Hawaii's potential for near-term project opportunities for the State's renewable energy resources;
- (3) Electric grid reliability and security projects that will enable the integration of a substantial increase of electricity from renewable energy resources;
- (4) A statewide clean energy public education and outreach plan to be developed in coordination with Hawaii's public education institutions;
- (5) Promotion of Hawaii's clean and renewable resources to potential partners and investors;
- (6) A plan, for implementation during the years 2011 to 2030, to transition the State to a clean energy economy; and
- (7) A plan to assist each county for the implementation during the years 2011 to 2030, to transition each county to a clean energy economy.

(b) Prior to the initiation of any activities authorized under subsection (a), the department of business, economic development, and tourism shall develop a plan of action with the intent of promoting effective prioritization and focusing of efforts consistent with the State's energy programs and objectives.

The department of business, economic development, and tourism shall submit a report to the legislature no later than twenty days prior to the convening of each regular session, on the status and progress of existing clean energy initiatives, and the status of new initiatives. The report shall also include the spending plan of the Hawaii clean energy initiative

program, all expenditures of energy security special fund moneys, the targeted markets including why those markets were selected and who will be served and why, and the specific objectives of the program and program expenditures, and measurable outcomes."

SECTION 12. There is appropriated out of the energy security special fund the sum of \$ _____ or so much thereof as may be necessary for fiscal year 2010-2011 to provide seven positions for and otherwise support the Hawaii clean energy initiative of the department of business, economic development, and tourism.

The sum appropriated shall be expended by the department of business, economic development, and tourism for the purposes of this section.

**PART VI
RENEWABLE ENERGY**

SECTION 13. The purpose of this part is to support the renewable energy industry in Hawaii by:

- (1) Establishing a renewable energy branch in the department of business, economic development, and tourism to coordinate and promote renewable energy initiatives;
- (2) Strengthening laws supporting energy diversification, long-term provision of dependable energy services, and use of diverse energy technologies; and
- (3) Providing adequate resources to support the renewable energy industry, and renewable energy planning and programs in the department of business, economic development, and tourism.

SECTION 14. Chapter 201, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

"§201- Renewable energy branch; establishment. (a)
There is established a renewable energy branch within the department.

(b) Branch functions shall include:

- (1) Renewable energy resource assessments, technical analyses, and resource development functions, including design, management, and completion of systematic analysis of existing and proposed energy resource programs;
- (2) Evaluation of analyses conducted by government agencies and other organizations;

- (3) Development and management of programs to encourage public and private exploration, research, and commercial development of renewable energy resources;
- (4) Project facilitation functions, including the development and implementation of programs to facilitate the efficient permitting of renewable energy projects;
- (5) Renewable energy partnership and outreach functions, including participation in renewable and sustainable energy evaluation and demonstration projects, outreach, and other activities to promote technically, economically, and environmentally feasible technologies and projects;
- (6) Renewable energy resource, technology, and project viability consultant functions, including serving as a consultant to the governor, public agencies, and private industry on matters related to the use of Hawaii's renewable energy resources; and
- (7) Research, reporting, implementation, and support of renewable and transportation energy related laws."

SECTION 15. Section 201-12.5, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

"(a) There is established within the department of business, economic development, and tourism the position of renewable energy facilitator, which shall be a full-time, [~~temporary~~] permanent position exempt from chapters 76 and 89. The renewable energy facilitator shall possess a requisite level of knowledge and expertise in the areas of renewable energy, state and county permitting processes, and management necessary to carry out the duties of the position."

SECTION 16. There is established within the department of business, economic development, and tourism, the position of energy program administrator. The position shall be a full-time position exempt from chapters 76 and 89, Hawaii Revised Statutes.

SECTION 17. There are established within the department of business, economic development, and tourism seven full-time temporary positions to support the planning and renewable energy provisions of chapters 196, 201, and 226, Hawaii Revised Statutes. The positions shall be exempt from chapters 76 and 89, Hawaii Revised Statutes.

SECTION 18. Subject to the availability of federal funding for energy programs provided by grants, and subject to the

constraints, oversight, and reporting requirements of those federal programs, the governor is hereby authorized to establish positions necessary to accomplish the management of those energy projects funded by federal grants; provided that the positions shall be exempt from chapters 76 and 89, Hawaii Revised Statutes; and provided further that the governor shall submit a report to the legislature on all positions established as of December 31 and June 30 of each fiscal year that the positions exist and are occupied.

SECTION 19. There is appropriated out of the energy security special fund the sum of \$ _____ or so much thereof as may be necessary for fiscal year 2010-2011 for the department of business, economic development, and tourism to fill the permanent, full-time equivalent (1.00 FTE) renewable energy facilitator position established in section 201-12.5, Hawaii Revised Statutes.

The sum appropriated shall be expended by the department of business, economic development, and tourism for the purposes of this part.

SECTION 20. There is appropriated out of the energy security special fund the sum of \$ _____ or so much thereof as may be necessary for fiscal year 2010-2011 for the department of business, economic development, and tourism to fill the permanent, full-time equivalent (1.00 FTE) energy program administrator position established in section 15.

The sum appropriated shall be expended by the department of business, economic development, and tourism for the purposes of this part.

SECTION 21. There is appropriated out of the energy security special fund established pursuant to section 201-12.8, Hawaii Revised Statutes, the sum of \$ _____ or so much thereof as may be necessary for fiscal year 2010-2011 for the seven full-time, temporary positions, established under section 16.

The sum appropriated shall be expended by the department of business, economic development, and tourism for the purposes of this part.

**PART VII
GREENHOUSE GAS EMISSIONS REDUCTION TASK FORCE**

SECTION 22. There is appropriated out of the energy security special fund, established pursuant to section 201-12.8, Hawaii Revised Statutes, the sum of \$ _____ or so much

thereof as may be necessary for fiscal year 2010-2011 for the greenhouse gas emissions reduction task force established pursuant to Act 234, Session Laws of Hawaii 2007.

The sum appropriated shall be expended by the department of business, economic development, and tourism for the purposes of this part.

PART VIII

CLIMATE CHANGE RESILIENCE AND ADAPTATION

SECTION 23. Chapter 195D, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

"§195D- Climate change resilience and adaptation special fund; establishment. (a) There is established within the state treasury the climate change resilience and adaptation special fund.

(b) The following shall be deposited into the special fund:

- (1) The portion of the environmental response, energy and food security tax specified under section 243-3.5;
- (2) Any appropriation by the legislature into the special fund;
- (3) Any grant or donation made to the special fund; and
- (4) Any interest earned on the balance of the special fund.

(c) Subject to legislative appropriation, moneys in the special fund may be expended to promote the resilience and adaptation of indigenous plants, animals, aquatic life, and their associated ecosystems to ensure their ongoing health, function and ability to deliver public services such as fresh water, sediment control, shoreline protection, and food in the face of the effects of global climate change, including but not limited to the following:

- (1) The awarding of grants to governmental and non-governmental entities and individuals;
- (2) The acquisition of real property;
- (3) The protection, management and restoration of forests, watersheds, coastal resources, and fresh water and marine ecosystems;
- (4) The restoration of forests for the purposes of carbon sequestration and other ecosystem services;
- (5) The purchase of necessary equipment;
- (6) The conduct of necessary research and planning;
- (7) To fund, to the extent possible, the climate change task force; and

(8) Any other activity intended to preserve the function and health of natural systems to adapt and be resilient to the effects of climate change.

(d) The department shall manage the special fund, including any expenditures from the fund, in consultation with the division of forestry and wildlife, the division of aquatic resources, the natural area reserve system commission, the forest stewardship commission, and the University of Hawaii Center for Island Climate Adaptation and Policy."

(e) The department shall submit a report to the legislature no later than twenty days prior to the convening of each regular session on the status and progress of existing programs and activities, and the status of new programs and activities funded under the climate change resilience and adaptation special fund. The report shall also include the spending plan of the climate change resilience and adaptation special fund, all expenditures of climate change resilience and adaptation special fund moneys, the specific objectives of the expenditures, and measurable outcomes."

SECTION 24. There is appropriated to the department of land and natural resources out of the climate change resilience and adaptation special fund the sum of \$ _____ or so much thereof as may be necessary for fiscal year 2010-2011 to carry out the purposes of this part.

PART IX
CLIMATE CHANGE TASK FORCE

SECTION 25. There is appropriated out of the climate change resilience and adaptation special fund, the sum of \$ _____ or so much thereof as may be necessary for fiscal year 2010-2011 for the climate change task force established pursuant to Act 20, Session Laws of Hawaii 2009.

The sum appropriated shall be expended by the office of planning within the department of business, economic development, and tourism for the purposes of this part.

SECTION 26. There is appropriated out of the energy security special fund, established pursuant to section 201-12.8, Hawaii Revised Statutes, the sum of \$ _____ or so much thereof as may be necessary for fiscal year 2010-2011 for the climate change task force established pursuant to Act 20, Session Laws of Hawaii 2009.

The sum appropriated shall be expended by the office of planning within the department of business, economic development, and tourism for the purposes of this part.

PART X

SECTION 27. This Act does not affect rights and duties that matured, penalties that were incurred, and proceedings that were begun, before its effective date.

SECTION 28. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 29. This Act shall take effect on July 1, 2010.

INTRODUCED BY: _____

February 17, 2010

Hawaii State legislature
State Capital
Honolulu, Hawaii 96813



Support Testimony on
H.B. NO. 2421
Relating To Hawai'i Food & Energy Security

COMMITTEE ON FINANCE

Rep. Marcus Oshiro, Chair
Rep. Marilyn Lee, Vice Chair

Thursday, February 18, 2010, 4:00 p.m., Conference Room 308

Aloha Chair Oshiro, Vice Chair Lee, and All Committee Members!

Enterprise Honolulu, the Oahu Economic Development Board, strongly supports H.B. 2421, – to create a new Council and Task Force to provide direction and governing authority for Hawai'i's food and energy security. This legislation gives Hawai'i the ability to turn two of our largest economic problems and threats into two of our most significant new opportunities, food and energy security.

While there is much to work on towards a clean economic future, this legislation is a monumental act to affirm our commitment to leave a better world with more economic opportunities for generations to come.

It is critically important to note that as we've spoken to individuals and organizations in our community regarding the impacts, the general feedback has been positive with a definite emphasis to have the monies generated by this legislation be used for the sole purpose for which it is being taken and not misdirected to a different objective.

Enterprise Honolulu, the Oahu Economic Development Board, supports HB 2421. We are committed to working with you to help make this legislation a reality.

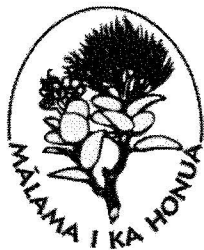
Sincerely,

Pono Shim
President and CEO
Enterprise Honolulu, The Oahu Economic Development Board



ENTERPRISE
HONOLULU

THE BUSINESS CLIMATE OF PARADISE



Sierra Club Hawai'i Chapter

PO Box 2577, Honolulu, HI 96803
808.538.6616 hawaii.chapter@sierraclub.org

HOUSE COMMITTEE ON FINANCE

February 18, 2010, 4:00 P.M.
(Testimony is 2 page long)

TESTIMONY IN STRONG SUPPORT OF HB 2421

Aloha Chair Oshiro and Members of the Committees:

The Hawai'i Chapter of the Sierra Club ***strongly supports*** HB 2421, which establishes financing to ensure Hawai'i's energy and food security security. The bill is a smart tax-shifting policy designed to foster greater energy independence by tapping into the source of our problem so as to fund our preferred future. It has the additional benefit of putting Hawai'i's money to work here on the islands instead of sending it off to the Middle East.

The concept behind this measure is to help "internalize" the external costs of certain activities; in this case, charge a fee for products that are damaging to the environment and use that money to help mitigate the damage. The link is quite clear between the use of petroleum products and corresponding impacts on our fragile island environments—not only in oil spills, which was the original impetus for the environmental response tax, but also in runoff from the roads our cars drive on, in degraded air quality, and in greenhouse gas emissions and climate change. This measure would provide additional funds for their efforts, as well as provide funding for energy efficiency projects and development of renewable energy critical for Hawai'i's long-term future.

While we all likely agree we need to aggressively increase our clean energy use in Hawai'i and decrease our reliance on imported crude, we cannot do it with funding for research, development, and policy implementation. To this end, the Sierra Club suggests similarly targeting energy efficiency and incentive programs designed to reduce our dependence on fossil fuels. In fact, this should be the thrust of this fund. Such efforts will provide benefits in excess of the small fee increase. For example, creating a loan fund for the installation of solar water heaters will create economic benefits for everyone in excess of the imposition of a \$1.00 or greater charge.

Specifically, the Sierra Club recommends identifying contributions to the existing energy efficiency Public Benefit Funds Administrator (regulated by the Public Utilities Commission), which would directly increase and add efficiency incentives (such as appliance buy-back programs, free home energy audits, solar water heater and compact fluorescent/LED rebates, and

other efficiency programs. In addition, contributions should be made into direct incentive programs that are designed to maximize small, local renewable energy sources.

We further suggest raising the total proposed fee to \$5. This increase would offset the amount no longer received because of the commercial air transportation “complaints” and help ensure we are able to meet the identified goals.

Mahalo for the opportunity to testify.



**Testimony to the House Committee on Finance
Hawaii State Capitol
Conference Room 308
Thursday, February 18, 2010 at 4:00 p.m.
Agenda #4**

SUBJECT: HOUSE BILL 2421 HD1- RELATING TO GOVERNMENT

Chair Oshiro, Vice Chair Lee and Members of the Committee:

My name is Jim Tollefson and I am the President and CEO of The Chamber of Commerce of Hawaii ("The Chamber"). I appreciate the opportunity to state The Chamber's strong support of the language in House Bill No. 2421 HD1, which acknowledges federal preemptions for aviation fuel.

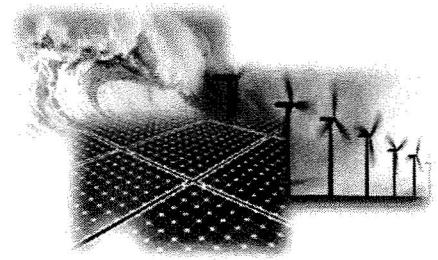
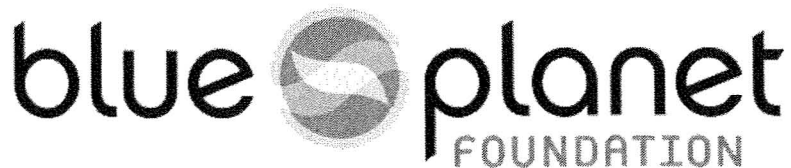
The Chamber is the largest business organization in Hawaii, representing more than 1,000 businesses. Approximately 80% of our members are small businesses with less than 20 employees. The organization works on behalf of members and the entire business community to improve the state's economic climate and to foster positive action on issues of common concern.

The Chamber encourages a broad base of understanding, support and appreciation for the Tourism and Travel Industries within the business community, Legislature and the general public. The committee also supports visitor industry growth and improvement while working to enhance the visitor experience.

The Chamber understands the value and significance of the airline industry, especially our local carriers, who in addition to serving the travel needs for the people of Hawaii and beyond, have contributed significantly to the community. Additional decline in the travel industry harms all businesses and the local economy. As a result, the Chamber wants to embrace and strengthen the commercial aviation sector.

A section in this bill proposes to recognize the preemption provisions of the Federal Aviation Act, codified in 49 U.S.C. 47133, which prohibits the application of local taxes on aviation fuel if the revenue derived from the tax is not used for airport purposes. The Chamber believes this is a relevant step in the right direction of giving aid to the industry. Airlines are facing serious challenges today, and exempting them from the general excise and use tax on aviation fuel will help to alleviate some financial burdens. Overall, this measure will help our airline industry, as well as benefit the state as a whole.

In light of this, the Chamber of Commerce of Hawaii urges your support this provision of House Bill 2421 HD1. Thank you for the opportunity to express our views on this matter.



HOUSE COMMITTEE ON FINANCE

February 18, 2010, 4:00 P.M.

Room 308

(Testimony is 8 pages long)

TESTIMONY IN STRONG SUPPORT OF HB 2421 HD1, SUGGESTED AMENDMENTS

Chair Oshiro and members of the Finance Committee:

The Blue Planet Foundation strongly supports House Bill 2421 HD1, providing for funding of food and energy security through a surcharge on each barrel of oil imported into Hawai'i. We believe this is keystone clean energy policy that will enable much of the energy transition to the preferred future Hawai'i has been seeking for generations. The critical elements of Hawai'i's clean energy future—energy efficiency, smart-grid infrastructure, planning and implementation—require up-front investment.

Blue Planet believes the best way to provide investment funds is by tapping the source of our problem—imported oil—to fund clean energy programs. This measure will help enable Hawai'i's clean energy future while creating good paying, local jobs in the high-tech renewable energy and energy efficiency fields. Further, according to market research commissioned by Blue Planet, over two-thirds of Hawai'i residents support paying an additional amount on their energy bills (with the mean equivalent to a \$5 per barrel tax) if the revenue was dedicated to Hawai'i's clean energy future.

We appreciate and support the amendments made by the previous committees. However, to truly accelerate Hawai'i's transition to energy independence, Blue Planet proposes the following four amendments to HB 2421 HD1:

- Increase the oil tax to \$5 per barrel (yielding approximately \$160 million annually).
- Expand the uses of the barrel tax to include the following programs:
 1. Double the capacity of the **existing energy efficiency** Public Benefit Funds Administrator (regulated by the Public Utilities Commission), including increasing and adding efficiency incentives such as appliance buy-back programs, free home energy audits, solar water heater and compact fluorescent / LED rebates, and other efficiency programs;

Jeff Mikulina, executive director • jeff@blueplanetfoundation.org

55 Merchant Street 17th Floor • Honolulu, Hawai'i 96813 • 808-954-6142 • blueplanetfoundation.org

2. Fund independent **distributed renewable energy grid connection studies** as required by the utility (via Rule 14H)—currently a major disincentive to grid interconnection by private clean energy developers; and
 3. Fund county energy office positions.
- Sunset the aviation fuel exemption on January 1, 2015.
 - Ensure that the aviation fuel exemption applies only to aviation fuel, not simply for fuels that aviation companies use for ground transportation and other non-flying uses.

Blue Planet would also support expanding the barrel tax to include other carbon fuel imports such as coal.

Proposed amendment language is included at the end of the testimony.

Rationale for Barrel Tax Policy in 2010

If we truly want to rapidly transition Hawai'i to energy independence, we have to be prepared to invest in that preferred future today. We cannot afford to wait until the economy recovers and the price of oil returns to triple-digits as it did in 2008.

Hawai'i is the most dependent state in the nation on imported oil. Some 50 million barrels are imported annually, nearly 80% of which originate from foreign sources¹. In addition, over 805,000 tons of coal are imported into our state². These sources provide power for over 92% of Hawaii's electricity generation. The combustion of these resources also contributes over 23 million tons of climate changing greenhouse gas into our atmosphere annually³. Hawaii's economic, environmental, and energy security demand that we reduce the amount of fossil fuel imported and consumed in Hawai'i. To that end, new policies and sources of funding are critically needed that will dramatically increase energy efficiency, build our smart energy infrastructure with storage, and develop clean, renewable, and indigenous energy sources.

A \$5 per barrel tax on oil would provide the needed funding for clean energy and efficiency research, planning, implementation to transition to our preferred clean energy future. As we dramatically expand our clean energy capacity in Hawai'i, the real economic benefits of this carbon surcharge will far outweigh the additional burden it may present.

¹ The State of Hawaii Data Book, 2007

² *Ibid.*

³ ICF International. Inventory of Greenhouse Gas Emissions and Sinks in Hawaii: 1990 and 2007. December 2008.

Barrel Tax is Smart Tax Policy

A barrel fee (or “carbon tax”) is smart tax-shifting policy that discourages fossil fuel use while providing a source of revenue for clean energy planning and implementation. The concept behind the measure is to help “internalize” the external costs of certain activities; in this case, charge a fee for products that are damaging to the environment and use that money to help mitigate the damage. The link is quite clear between the use of petroleum products and corresponding impacts on our fragile island environments—not only in oil spills, which was the original impetus for the environmental response tax, but also in runoff from the roads our cars drive on, in degraded air quality, and in greenhouse gas emissions and climate change.

Unlike many other taxes, the barrel tax is largely avoidable by most residents. Energy efficiency, conservation, and switching to clean sources of power all reduce the burden of the tax. In fact, most residents could reduce the amount of barrel tax they pay by installing some compact fluorescent light bulbs at home and ensuring that car tires are properly inflated. Ensuring that a good portion of the oil tax revenues are spent on energy efficiency measures will help reduce the potential regressive nature of the policy.

A “clean energy” surcharge on a barrel of oil of \$5 is approximately the same as a carbon tax of \$10.45 per ton of carbon dioxide (CO₂)⁴. It would have a marginal impact on petroleum users, yet significantly increase the state’s ability to deliver energy efficiency investments and clean energy project funding. A \$10.35 “carbon fee” is average. Many European countries have carbon taxes that exceed \$10.00 per ton. In 2008, the Canadian province of British Columbia enacted a carbon fee that started at approximately \$8.00 per ton (English) in July, 2008, and increases to \$24 per ton by 2012.

Public Support

Blue Planet Foundation conducted market research in December 2009 to discern the level of public support for a barrel tax for clean energy investment. The statewide survey of residents found broad support for a barrel tax with over two-thirds supporting a tax of some amount. The average level of support was equivalent to a \$5 per barrel tax. Forty-two percent of residents supported paying an additional \$15 on their monthly energy bills, equivalent to a \$9 per barrel tax. These findings should provide comfort to decision makers wrestling with how to develop funding for Hawaii’s clean energy future—Hawaii’s residents are willing to pay to wean Hawaii from its oil dependence.

⁴ At 23 lbs CO₂ produced per gallon oil and 42 gallons per barrel.

Limited Exemption for Aviation Fuel

In 2009, the interisland air carriers raised objections to the inclusion of jet fuel in the barrel tax. Unlike ground transportation and electricity (and even marine transportation), no ready fuel substitutes exist for jet fuel presently. Blue Planet supports a limited airline fuel exemption with a 5-year sunset date (January 1, 2015) to overcome these concerns. We support a smaller tax on airline fuel to be used for other important purposes, such as inspections.

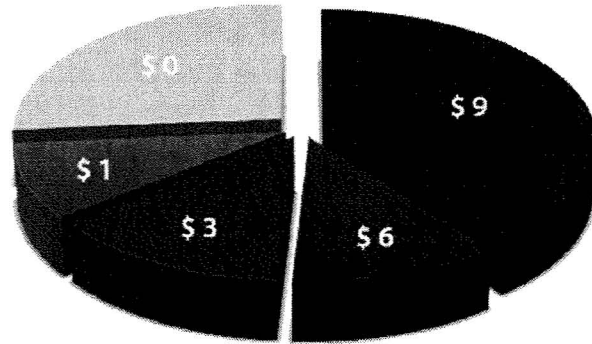
Need for Efficiency Funding

The revenue developed from the barrel tax must be dedicated to the most effective levers to accelerate the transition to our clean energy future: providing incentives, removing roadblocks, integration planning, and efficiency. Increasing energy efficiency must be a high priority use of these funds, as efficiency is typically the fastest, cheapest, and most effective way to reduce fossil fuel use. Further, efficiency improvements have the broadest resident benefit and are a straightforward way to decrease the impact of the barrel tax.

House Bill 2421 HD1 does not explicitly provide for using the barrel tax revenues for direct energy efficiency programs. Fortunately, a program has been established to administer energy efficiency programs via a third-party administrator under the public utilities commission (PUC). The public benefits fund administrator (PBFA), established in §269-122, receives funds from the public benefits fee charged to the electric utility. This PBFA is held accountable to strict standards on how the funds can be spent, with at least 90% of expenditures to be used on direct efficiency programs and the balance for overhead and management (pursuant to §269-122). The current PBFA is under a two-year contract with the PUC. Their performance will be reviewed in terms of measureable and verifiable energy savings per dollar spent.

The PBFA provides incentives and education to accelerate the investment in energy efficiency. The financial support is typically in the form of rebates and incentives to encourage the adoption

Resident Support For Barrel Tax



A total of 500 interviews with registered voters state-wide were conducted between December 3 - 12, 2009. The margin of error for the sample +/- 4.38 percentage points with a 95% confidence level.

SURVEY QUESTION:

"Reducing Hawaii's dependence on imported oil requires investing in new clean energy systems. How much would you be willing to pay additionally per month on your total energy bill (electricity and fuel) if the revenue was dedicated to creating new clean energy systems and reducing dependence on oil"

of efficiency measures. This support has been effective in increasing efficiency, however, the funding is limited; solar rebates on O'ahu this year, for example, are being reduced from \$1000 per installation to \$800. Doubling the current amount of funding to the PBFA would make efficiency improvements more accessible and affordable to a greater number of Hawai'i residents.

While some may believe it is best to wait to fully review the current PBFA before providing additional funding for the program, Blue Planet believes that it is best for this measure to set policy for the long term—that is, ample funding for energy efficiency programs for Hawai'i residents and businesses. The PBFA is the most sensible place to direct oil tax funding to achieve immediate, measureable, verifiable, and accountable decreases in oil consumption.

Amendments

While we all likely agree that we need to aggressively increase our energy efficiency and clean energy use in Hawai'i and decrease our reliance on imported crude, we cannot do it with funding for planning, implementation, development, and funding. House Bill 2421 wisely taps the source of our problem—imported oil—to fund clean energy programs.

Proposed amendments to HB 2421 HD1 follow. Blue Planet is happy to work with the Committee to develop appropriate language to accomplish that outcome.

Thank you for the opportunity to testify.

PROPOSED AMENDED LANGUAGE IN HB 2421 HD1

SECTION 4. Section 243-3.5, Hawaii Revised Statutes, is amended as follows:

1. By amending its title and subsection (a) to read:

"§243-3.5 Environmental response, energy, and food security tax; uses. (a) In addition to any other taxes provided by law, subject to the exemptions set forth in section 243-7, there is hereby imposed a state environmental response, energy, and food security tax of \$5.05 (five dollars and five cents) on each barrel or fractional part of a barrel of petroleum product sold by a distributor to any retail dealer or end user, other than a refiner, of petroleum product; provided that each barrel or fractional part of a barrel of petroleum product sold by a distributor to any retail dealer or end user, other than a refiner, of petroleum product that is aviation fuel shall be subject to a state environmental response, energy, and food security tax of 5 cents; provided further that of the tax collected pursuant to this subsection:

- (1) 5 cents of the tax on each barrel, including all tax revenues received under this section for the sale of aviation fuel shall be deposited into the environmental response revolving fund established under section 128D-2;
- (2) 100 cents of the tax on each barrel shall be deposited into the energy security special fund established under section 201-12.8;
- (3) 45 cents of the tax on each barrel shall be deposited into the energy systems development special fund established under section 304A-2169;

- (4) 100 cents of the tax on each barrel shall be deposited into the agricultural development and food security special fund established under section 141-18;
- (5) 100 cents of the tax on each barrel shall be deposited into the energy efficiency special fund established under section 269- ; and
- (6) 150 cents of the tax on each barrel shall be deposited into the general fund.

The tax imposed by this subsection shall be paid by the distributor of the petroleum product."

PROPOSED NEW LANGUAGE FOR HB 2421 HD1

SECTION XXX. Chapter 269, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

"§269- Energy Efficiency special fund; establishment. (a) There is established within the state treasury the energy efficiency special fund.

(b) The following shall be deposited into the special fund:

(1) The portion of the environmental response, energy, and food security tax specified under section 243-3.5;

(2) Any appropriation by the legislature into the special fund;

(3) Any grant or donation made to the special fund; and

(4) Any interest earned on the balance of the special fund.

(c) Subject to legislative appropriation, moneys in the special fund shall be expended by the public utilities commission for the same purposes as the public benefit fees collected pursuant to section 269-121.

SECTION XXX. Section 269-122, Hawaii Revised Statutes, is amended as follows:

§269-122 Public benefits fee administrator; establishment.

(a) The public utilities commission may contract with a third-party administrator, to operate and manage any programs established under section 269-121. The administrator shall not be deemed to be a "governmental body" as defined in section 103D-104[; provided that all moneys transferred to the third-party administrator shall be comprised solely of public benefit fees collected pursuant to section 269-121]. The administrator shall not expend more than ten per cent of the collected public benefits fees or legislative appropriations pursuant to section 269- in any fiscal year, or other reasonable percentage determined by the public utilities commission, for administration of the programs established under section 269-121.

(b) The public benefits fee administrator shall be subject to regulation by the public utilities commission under any provision applicable to a public utility in sections 269-7, 269-8, 269-8.2, 269-8.5, 269-9, 269-10, 269-13, 269-15, 269-19.5, and 269-28, and shall report to the public utilities commission on a regular basis. Notwithstanding any other provision of law to the contrary, the public benefits fee administrator shall not be an electric public utility or an electric public utility affiliate.

**TESTIMONY OF KEONI WAGNER ON BEHALF OF HAWAIIAN AIRLINES
REGARDING H.B. NO. 2421, HD 1, RELATING TO GOVERNMENT**

February 18, 2010

To: Chairman Marcus Oshiro and Members of the House Committee on Finance:

My name is Keoni Wagner and I am the Vice President for Public Affairs for Hawaiian Airlines presenting this testimony on behalf of Hawaiian Airlines regarding H.B. No. 2421, HD 1.

Hawaiian Airlines supports the pursuit of alternate energy and environmental protections, but we believe the application of this proposed tax increase to aviation fuel runs afoul of federal law and therefore should be specifically exempted.

Section 4 of the bill, beginning on page 11, increases the tax by one dollar on each barrel or fractional part of a barrel of petroleum product sold to an end user with an exception for aviation fuel which is taxed at 5 cents instead of one dollar and five cents.

Hawaiian has received a legal opinion which confirms that federal law prohibits the application of local taxes on aviation fuel if the revenue derived from the tax is not used for airport related purposes. For this reason, we recommend adoption of the language in Section 4 of this bill.

Thank you for the opportunity to present comments on this measure.

AIRLINES COMMITTEE OF HAWAII

Honolulu International Airport
300 Rodgers Blvd., #62
Honolulu, Hawaii 96819-1832
Phone (808) 838-0011
Fax (808) 838-0231

February 18, 2010

The Honorable Marcus Oshiro, Chair
House Committee on Finance

**Re: House Bill 2421 HD1 – Relating to Government
FIN # 4 – February 18, 2010, 4 PM – Conference Room 309**

Aloha Chair Oshiro, Vice Chair Lee and Members of the Committee:

The Airlines Committee of Hawaii* (ACH), which is made up of 23 signatory air carriers that underwrite the Hawaii State Airport System, supports language contained in HB 2421, HD1, which acknowledges federal preemptions for aviation fuel.

This bill recognizes the preemption provisions of the Federal Aviation Act, codified in 49 U.S.C. 47133, which prohibits the application of local taxes on aviation fuel if the revenue derived from the tax is not used for airport purposes.

For these reasons, we respectfully urge your committees to support the preemption provisions for aviation fuel contained in this bill.

As always, we are grateful for the opportunity to provide input on this matter.

Sincerely,

Alan Ogawa
ACH Co-Chair

Lori Peters
ACH Co-Chair

**ACH members are Air Canada, Air New Zealand, Air Pacific, Alaska Airlines, All Nippon Airways, American Airlines, China Airlines, Continental Airlines, Continental Air Micronesia, Delta Air Lines, Federal Express, go!, Hawaiian Airlines, Japan Airlines, JALways, Korean Air, Northwest Airlines, Philippine Airlines, Qantas Airways, United Airlines, United Parcel Service, US Airways, and Westjet.*

FINTestimony

From: mailinglist@capitol.hawaii.gov
Sent: Tuesday, February 16, 2010 4:40 PM
To: FINTestimony
Cc: gabriela@keapana.net
Subject: Testimony for HB2421 on 2/18/2010 4:00:00 PM

Testimony for FIN 2/18/2010 4:00:00 PM HB2421

Conference room: 308
Testifier position: support
Testifier will be present: No
Submitted by: Gabriela Taylor
Organization: Individual
Address: 5620 Keapana Rd Kapaa, Hi.
Phone: 808 823-9013
E-mail: gabriela@keapana.net
Submitted on: 2/16/2010

Comments: