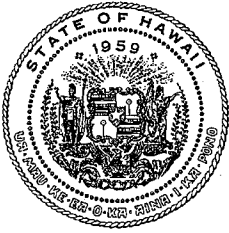


SB 467



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

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Statement of
THEODORE E. LIU
Director
Department of Business, Economic Development, and Tourism
before the
SENATE COMMITTEE ON ENERGY AND ENVIRONMENT
Tuesday, February 10, 2009
3:00 PM
State Capitol, Conference Room 225

in consideration of
SB 467
RELATING TO RENEWABLE ENERGY.

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

The Department of Business, Economic Development, and Tourism (DBEDT) offers comments and thanks the committee for considering SB467. We agree that the area of renewable energy project development is one that deserves significantly more attention if we are going to actually transition our energy systems to renewable resources within a generation. We defer to the Department of Taxation with respect to Section 3 of the bill.

Regarding Section 2 of the bill: we have, in fact, established a Renewable Energy Program as part of the Hawaii State Energy Office. This was done about three months ago, and it is intended that the program will grow into a branch in the next six months. The new branch will support the economically- and environmentally-sound development of renewable and transportation energy resources (including solar, wind, biomass, geothermal, hydropower, ocean thermal, wave) and related technologies (energy storage, conversion, transport and delivery).

Renewable Energy Branch functions will include:

- **Renewable energy resource assessments, technical analyses, and resource development** functions, including: conducting systematic analysis of existing and proposed energy resource programs; evaluating the analyses conducted by government agencies and other organizations; formulating plans for the optimum development of Hawaii's renewable energy resources; developing programs to encourage private and public exploration, research and commercial development of renewable energy resources.
- **Project Facilitation** functions, including: developing and carrying out programs to facilitate the efficient permitting of renewable energy projects.
- **Renewable energy partnership and outreach** functions, including: participating in renewable and sustainable energy evaluation and demonstration projects, outreach, and other activities to promote technically, economically, and environmentally feasible technologies and projects.
- **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 utilization of Hawaii's renewable energy resources.
- **Research, reporting, implementation, and other statutory functions**, including: Carrying out other activities in support of renewable and transportation energy related statutes, laws, acts, regulations, and initiatives, including relevant sections of the Hawaii Revised Statutes, which include but are not limited to:

§196 Energy resources. This includes: formulate plans, including objectives, criteria to measure accomplishment of objectives, programs through which the objectives are to be attained, and financial requirements for the

optimum development of Hawaii's energy resources; conduct systematic analysis of existing and proposed energy resource programs, evaluate the analysis conducted by government agencies and other organizations and recommend to the governor and to the legislature programs which represent the most effective allocation of resources for the development of energy sources; develop programs to encourage private and public exploration and research of alternative energy resources which will benefit the State; conduct public education programs to inform the public of the energy situation; serve as consultant to the governor, public agencies and private industry on matters related to energy resources; contract for services; prepare and submit annual and other reports; support the Energy Resources Coordinator as needed.

§226-18 Objectives and policies for energy. This includes: support research and development as well as promote the use of renewable energy sources; evaluate energy resource options on the basis of comprehensive, quantitative, and qualitative accounting of long-term, direct and indirect economic, environmental, social, cultural, and public health costs and benefits; ensure, to the extent that new supply-side resources are needed, that the development or expansion of energy systems uses the least-cost energy supply option and maximizes efficient technologies; promote alternate fuels and energy efficiency; support actions that reduce, avoid, or sequester greenhouse gases; support the Energy Resources Coordinator as needed.

§269, sections 27.2 utilization of electricity generated from nonfossil fuels; 91-95 renewable portfolio standards; 101-111 net energy metering; and other related or additional sections affecting renewable energy development. These imply: maintain cognizance of renewable energy-related projects and programs of the public utilities commission, electric utilities, renewable energy projects and developers, and others; of renewable energy production, storage, and transmission technologies; of policies and incentives at the national, state and local levels; of "best practices" in other states; and of renewable portfolio standards, interconnection requirements, feed-in tariffs, and related regulations proposed, considered, or established by the Public Utilities Commission.

§125C and §128 Energy emergency preparedness, plan development, and shortage management. These imply: support the Energy Resources Coordinator and Civil Defense Coordinator as needed.

§141-9 Energy Feedstock Program. This includes: assist the Chair of the Board of Agriculture to support and report on the production of energy feedstock in the State.

§486J-10 Ethanol content requirement. This includes: require gasoline for use in motor vehicles to contain ten per cent ethanol by volume; authorize the sale of gasoline without ethanol, under certain conditions; support Energy

Resources Coordinator administration and enforcement of the requirement, as needed.

§235-110.3(d) Ethanol facility tax credit. This includes: maintain records of the total amount of investment made by each taxpayer in a facility; verify the amount of the qualifying investment; certify the total amount of the tax credit for each taxable year and the cumulative amount of the tax credit during the credit period; issue a certificate to the taxpayer; track statewide ethanol production capacity; develop, provide, receive, and provide public access to forms providing written notices of intention to begin construction of qualifying ethanol production facilities; develop, provide, receive, and provide public access to ethanol production report forms; communicate with interested parties as necessary; provide reports.

§196-42 State support for achieving alternate fuels standards. This includes: facilitate the development of alternate fuels and support the attainment of a statewide alternate fuel standard of ten per cent of highway fuel demand to be provided by alternate fuels by 2010, fifteen per cent by 2015, and twenty per cent by 2020; "Alternate fuels" includes electricity for vehicles.

§304A-1892 advisory council to Hawaii natural energy institute. implies: support the Energy Resources Coordinator as needed.

§201N / 201-12.5 Renewable energy facility siting process / renewable energy facilitator. These include: employ and /or contract persons to assist; consult with appropriate government agencies to develop and establish a permit plan application format and procedure; determine an appropriate initial application fee; receive permit plan applications from applicants for the approval of the siting, development, construction, and operation of renewable energy facilities; identify all state and county permits necessary for approval of the renewable energy facilities; assist in the permit plan application process by coordinating permitting processes, giving technical assistance, overseeing the creation of the permit plan, and providing general oversight to facilitate timely review and permitting; gather relevant and necessary information for the reviewing and processing of permit applications; coordinate public meetings on the island where a renewable energy facility is proposed to be developed; transmit to each relevant state or county agency the portion of the fee that reflects the cost to that state or county agency for providing its input or advice or issuing the required permits; hold pre-application conferences with prospective applicants; review applications for completeness and, if complete, accept such applications; within ten days of acceptance of a permit plan application, publish public notice of the acceptance of the application in two consecutive publications of the office of environmental quality control's environmental notice; in conjunction with the pre-application conference, the initial public meeting, and any subsequent coordinating meetings with permitting agencies, compile a permit plan, which shall be a working document; regularly update the plan, make the updates available on the

department of business, economic development, and tourism's website; serve as the accepting authority for environmental impact statements and environmental assessments; initiate the implementation of key renewable energy projects by permitting various efficiency improvement strategies identified by the department; administer the day-to-day coordination for renewable energy projects on behalf of the department and the day-to-day operations of the renewable energy facility siting process; submit periodic reports to the legislature on renewable energy facilitation activities and the progress of the renewable energy facility siting process.

§171-95 State lands - disposition through direct negotiation to renewable energy producers. This implies: provide technical and project review for renewable energy projects, upon request of the Board of Land and Natural Resources.

The Renewable Energy Branch will be one of three branches comprising the Hawaii State Energy Office, and will work cooperatively with the Energy Policy Branch and the Energy Conservation Branch to achieve the energy independence goals of the state.

It is essential that these three aspects -- energy use, energy supply, and energy policy (including utility regulation and emergency preparedness) -- work together collaboratively, in an integrated manner, to achieve the greatest possible efficiencies and effectiveness.

Therefore, although we support the intent of the bill, we are concerned that SB467 would complicate the reorganization that is already under way.

We urge the committee to support the reorganization that is already under way and to consider, instead, the following revisions to Sections 226-18 and 196-4:

Section 226-18, Hawaii Revised Statutes, should be amended to strengthen energy diversification, a longer term view of what is reasonable, and utilization of energy technologies, as follows:

"§226-18 Objectives and policies for facility systems-- energy. (a) Planning for the State's facility systems with

regard to energy shall be directed toward the achievement of the following objectives, giving due consideration to all:

- (1) Dependable, efficient, and economical statewide energy systems capable of supporting the needs of the people;
- (2) Increased energy self-sufficiency where the ratio of indigenous to imported energy use is increased;
- (3) Greater energy security and diversification in the face of threats to Hawaii's energy supplies and systems; and
- (4) Reduction, avoidance, or sequestration of greenhouse gas emissions from energy supply and use.

(b) To achieve the energy objectives, it shall be the policy of this State to ensure the short- and long-term provision of adequate, reasonably priced, and dependable energy services to accommodate demand.

(c) To further achieve the energy objectives, it shall be the policy of this State to:

- (1) Support research and development as well as promote the use of renewable energy sources;
- (2) Ensure that the combination of energy supplies and energy-saving systems is sufficient to support the demands of growth;
- (3) Base decisions of least-cost supply-side and demand-side energy resource options on a comparison of their total costs and benefits when a least-cost is determined by a reasonably comprehensive, quantitative, and qualitative accounting of their long-term, direct

- and indirect economic, environmental, social, cultural, and public health costs and benefits;
- (4) Promote all cost-effective conservation of power and fuel supplies through measures, including:
 - (A) Development of cost-effective demand-side management programs;
 - (B) Education; and
 - (C) Adoption of energy-efficient practices and technologies;
 - (5) Ensure, to the extent that new supply-side resources are needed, that the development or expansion of energy systems uses the least-cost energy supply option and maximizes efficient technologies;
 - (6) Support research, development, ~~[and] demonstration, and~~ utilization of energy efficiency, load management, and other demand-side management programs, practices, and technologies;
 - (7) Promote alternate fuels and transportation energy efficiency ~~[by encouraging diversification of transportation modes and infrastructure]~~;
 - (8) Support actions that reduce, avoid, or sequester greenhouse gases in utility, transportation, and industrial sector applications;
 - (9) Support actions that reduce, avoid, or sequester Hawaii's greenhouse gas emissions through agriculture and forestry initiatives; and

- (10) Provide priority handling and processing for all state and county permits required for renewable energy projects."

Also, Chapter 196 - Energy Resources - should be strengthened in the renewable energy and project development areas, as follows:

§196-4 Powers and duties. Subject to the approval of the governor, the coordinator shall:

- (1) Formulate plans, including objectives, criteria to measure accomplishment of objectives, programs through which the objectives are to be attained, and financial requirements for the optimum development of Hawaii's energy resources;
- (2) Conduct systematic analysis of existing and proposed energy resource programs, evaluate the analysis conducted by government agencies and other organizations and recommend [~~to the governor and to the legislature~~] programs which represent the most effective allocation of resources for the development of energy sources;
- (3) Formulate and recommend specific proposals, as necessary, for conserving energy and fuel, including the allocation and distribution thereof[, ~~to the governor and to the legislature~~];

- (4) Assist public and private agencies in implementing energy conservation and efficiency programs, the development of indigenous energy resources, and related measures;
- (5) Coordinate the State's energy [~~conservation and allocation~~] programs with those [~~that~~] of the federal government, other state governments, governments of nations with interest in common energy resources, and the political subdivisions of the State;
- (6) Develop programs to encourage private and public exploration, [~~and~~] research, and development of [~~alternative~~] indigenous energy resources which will benefit the State;
- (7) Conduct public education programs to inform the public of the energy situation as may exist from time to time and of the government actions taken thereto;
- (8) Serve as consultant to the governor, public agencies, and private industry on energy-related matters [~~related to the acquisition, utilization and conservation of energy resources~~];
- (9) Contract for services when required for implementation of this chapter;
- (10) Review proposed state actions which the coordinator finds to have significant effect on the state's energy objectives [~~energy consumption~~] and report to the governor their effect on the energy [~~conservation~~]

program, and perform such other services as may be required by the governor and the legislature;

(11) Prepare and submit an annual report and such other reports as may be requested to the governor and to the legislature on the implementation of this chapter and all matters related to energy resources; [and]

(12) Formulate a systematic process including the development of requirements, to identify geographic areas that are rich with renewable energy resource potential which can be developed in a cost-effective and environmentally benign manner, and designate such areas as renewable energy zones;

(13) Develop and recommend incentives plans and programs to encourage the development of renewable energy resource projects within the renewable energy zones;

(14) Assist public and private agencies in identifying the utility transmission projects or infrastructure that are required to accommodate and facilitate the development of renewable energy resources;

(15) Assist public and private agencies in coordination with the department of budget and finance in accessing use of special purpose revenue bonds to finance the engineering, design, and construction of transmission projects and infrastructure that are deemed critical to the development of renewable energy resources;

(16) Develop the criteria or requirements for identifying and qualifying specific transmission projects or infrastructure that are critical to the development of renewable energy resources, and which the energy resources coordinator will assist in accessing the use of special purpose revenue bonds to finance such projects or infrastructure; and

~~[-(12)]~~ (17) Adopt rules for the administration of this chapter pursuant to chapter 91 [~~7~~ provided that the rules shall be submitted to the legislature for review]."

Thank you for the opportunity to offer these comments.

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GOVERNOR

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**SENATE COMMITTEES ON ENERGY & ENVIRONMENT AND
ECONOMIC DEVELOPMENT & TECHNOLOGY
TESTIMONY REGARDING SB 467
RELATING TO RENEWABLE ENERGY**

TESTIFIER: KURT KAWAFUCHI, DIRECTOR OF TAXATION (OR DESIGNEE)
DATE: FEBRUARY 10, 2009
TIME: 3:00PM
ROOM: 225

Among other things, this measure creates a new renewable energy business investment earned income tax credit in Chapter 235.

The Department of Taxation supports the intent of incentivizing alternative energy use in the State; however opposes the revenue loss generated by this measure and has strong concerns with the language of the tax credit.

CHAPTER 235 DOES NOT CALCULATE TAX LIABILITY BASED SOLELY UPON "EARNED INCOME," – This bill proposes to allow a taxpayer a credit against his or her "earned income tax liability." Although definitions for "earned income" and "earned income tax liability" are provided for purposes of the tax credit section, nothing in the bill establishes a new tax liability that is distinct from what is currently calculated in Chapter 235. In other words, once the tax credit is determined, it is not taken against the tax liability as currently calculated. Rather, it appears to be taken against a new type of tax liability that is not currently calculated under Chapter 235; so the tax credit could never be used by the taxpayer.

If it is the purpose of this bill to make the credit available only if the underlying business is profitable, the credit, as currently drafted, does not accomplish this goal.

DISCONNECT BETWEEN THE ACTIVITY INCENTIVISED AND THE PERSON CLAIMING THE CREDIT – The bill proposes to give each taxpayer a credit over five years that is based upon the amount invested in a qualified renewable energy business. However, besides what was mentioned above, the bill contemplates a credit that is taken against an "earned income tax liability" that is calculated from the net profit of the renewable energy business, not from the income of the person claiming the tax credit. If the intent of the credit is to incentivize investment, then the

profitability of the business invested in should not play a role in the availability of the credit.

THERE IS NO DEFINITION OF A RENEWABLE ENERGY BUSINESS – The tax credit defines "qualified renewable energy business" as a renewable energy business established after 2009, and there is a definition of "renewable energy," but the credit does not include a method for determining when a business established after 2009 is a renewable energy business. Without a definition, there is no way to distinguish a renewable energy business from any other business.

SUPPORT FOR ALTERNATIVE ENERGY—The Department strongly supports the encouragement and implementation of alternative energy systems in Hawaii in order to lessen the State's dependence on alternative energy. As fossil fuel and petroleum prices become more volatile, Hawaii's ability to generate its own energy from home will make the State more secure and less reliant on others.

PREFERENCE FOR ADMINISTRATION'S TAX PACKAGE—The Department prefers the comprehensive energy-related tax package contained in SB 871, which clarifies the renewable energy systems tax credits, as well as tax incentives for net-zero energy efficient buildings. The Administration's measure has been factored into the biennium budget and the financial plan.

OPPOSITION TO UNBUDGETED REVENUE LOSS— The Department cannot support the tax provision in this measure because it is not factored into the budget. The Department must be cognizant of the biennium budget and financial plan. This measure has not been factored into either. Given the forecasted decrease in revenue projections, this measure would add to the budget shortfall.

REVENUE LOSS—This legislation will result in a revenue loss of about \$35 million in FY10, \$60 million in FY11, \$80 million in FY 12, \$90 million in FY13, and \$100 million in FY2014 and after. This loss assumes that the credit functions in the same manner as the high technology business investment tax credit and that \$100 million is invested in qualifying businesses each year.

TAXBILLSERVICE

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SUBJECT: INCOME, Renewable energy business investment tax credit

BILL NUMBER: SB 467

INTRODUCED BY: Green

BRIEF SUMMARY: Adds a new section to HRS chapter 235 to allow taxpayers to claim a renewable energy business investment tax credit which shall be deductible from the taxpayer's net income tax liability, if any. The credit shall be 35% in the year the investment was made; 25% in the first year following the year the investment was made; 20% in the second year following the year the investment was made; 10% in the third year following the year the investment was made; and 10% in the fourth year following the year the investment was made.

Credits in excess of a taxpayer's income tax liability may be applied to subsequent income tax liability. Claims for the credit, including any amended claims, must be filed on or before the end of the twelfth month following the close of the taxable year. The director of taxation may adopt rules pursuant to HRS chapter 91 and prepare the necessary forms to claim the credit and may require proof of the claim for the credit.

Delineates recapture provisions if: (1) the business no longer qualifies as a qualified renewable energy business; (2) the business or interest in the business has been sold by the taxpayer investing in the qualified renewable energy; or (3) the taxpayer has withdrawn his investment from the qualified renewable energy center. The credit shall be recaptured and shall be equal to 10% of the total tax credit claimed in the preceding two taxable years.

Further delineates application, certification, and recordkeeping provisions of the department of business, economic development and tourism (DBEDT) relating to the credit. The taxpayer shall file a letter issued by DBEDT with the department of taxation.

Defines "earned income," "earned income liability," "qualified renewable energy business" and "renewable energy" for purposes of the measure.

The tax credit shall not be applicable to tax years beginning after December 31, 2019.

Also adds a new section to HRS chapter 201 to establish a renewable energy division within DBEDT .

EFFECTIVE DATE: Tax years beginning after December 31, 2009

STAFF COMMENTS: This measure proposes to encourage the establishment of renewable energy businesses through an investment tax credit. It should be remembered that the tax system is an inefficient means to accomplish this goal as the proposed measure would grant a credit regardless of a taxpayer's need for tax relief. This would merely result in a handout of precious state funds to provide financial

assistance to such businesses. What is objectionable is the fact that the taxpayer would be able to recover all of the investment made over a five-year period. If, in fact, the state is to give back the money invested in a renewable energy business, then the state might as well own the business and keep the profit. Note well that no amount of the tax credit is specified, only percentages of some unknown amount that can be taken over the five years following the investment. The credit could be \$1 or \$1 million, making this proposal another big black hole in the state's treasury.

The enactment of the proposed measure should cause concern to public policy makers because it lacks oversight in providing such subsidies through the tax credit system. Once enacted, the cost of the credit program is not subject to annual legislative review. Thus, the cost of the program may be much more than originally intended or envisioned. However, once enacted, it would be difficult to rescind such a tax preference. The use of a tax credit in this manner amounts to nothing more than a back door means of appropriating taxpayer dollars for a private purpose.

The measure also proposes to establish a division of renewable energy under the DBEDT. While the new division would also maintain renewable energy business investment tax credit information, it is questionable whether the department of taxation would be the more appropriate department to monitor this data.

Digested 2/9/09



**SENATE COMMITTEE ON ENERGY AND ENVIRONMENT
SENATE COMMITTEE ON ECONOMIC DEVELOPMENT AND TECHNOLOGY**

February 10, 2008, 3:00 P.M.
Room 225

(Testimony is 1 page long)

TESTIMONY IN SUPPORT OF SB 467

Chairs Gabbard and Fukunaga and members of the committees:

The Blue Planet Foundation supports the intent of SB 467, establishing a renewable energy division within the existing Department of Business, Economic Development, and Tourism (DBEDT) and creating new renewable energy investment tax incentives.

While Blue Planet supports the idea of a specific "renewable energy" division within DBEDT, we believe that it may be time to consider elevating the level of energy planning and implementation in Hawai'i. If we are serious about ending our addiction to fossil fuel and seek to be powered by 100% clean, renewable, and indigenous sources, the government office charged with guiding the transition deserves greater standing and funding within state government. We would support the creation of a state Hawai'i Energy Security Authority (HESA), something akin to the existing Hawai'i Tourism Authority (HTA). HESA would be a stand-alone entity, tasked with all aspects of planning, permitting, and implementation of Hawaii's clean energy future. The Authority would be funded solely from a fee on each barrel of oil imported into the state; as dependency on oil decreases, so does the work of the Authority, and the budget decreases accordingly. Given Hawaii's energy independence the status, funding, and prioritization it deserves would help ensure that we achieve our clean energy goals.

With regard to the tax incentives contemplated in SB 467, Blue Planet supports policy approaches to leverage greater private investment in Hawaii's clean energy future. The job creation, tax revenue generation, energy cost stability, and oil expense reduction aspects of clean energy investment largely favor significant tax incentives for such private investment.

In addition, we strongly encourage the legislature to favorably consider the policy changes in SB 464 that will expand existing tax credits for clean energy by allowing the credit to be monetized by more investors.

Thank you for the opportunity to testify.