NEIL ABERCROMBIE
GOVERNOR OF HAWAII

LORETTA J. FUDDY, A.C.S.W., M.P.H
DIRECTOR OF HEALTH

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

In reply, please refer to:
File:

HOUSE COMMITTEE ON FINANCE

S.B. 725, S.D. 2, RELATING TO SOLID WASTE

Testimony of Loretta J. Fuddy, A.C.S.W., M.P.H.
Director of Health

April 1, 2011
2:00 P.M.

Department's Position: The Department of Health supports this bill.

Fiscal Implications: Maintain solid waste program funding

Purpose and Justification: The purpose of this bill is to modify the existing solid waste management surcharge so that it applies to waste-to-energy facilities and facilities that prepare waste for disposal outside the state of Hawaii.

The department has met with stakeholders in a meeting organized by the Senate Committee on Energy and Environment (ENE) regarding H.B. 786 HD2, SD1. While the bills differ in appearance, they have similar effects on certain solid waste management facilities. Through the discussions, we have become aware of prominent stakeholder concerns that apply to both bills. The department is actively working with Senate ENE to address these concerns.

In light of those discussions, we continue our support of S.B. 725, SD2 as a potential second option to resolving the overlapping issues with H.B. 786 HD2, SD1.

Thank you for the opportunity to testify on this measure.

DEPARTMENT OF ENVIRONMENTAL SERVICES
CITY AND COUNTY OF HONOLULU
1000 ULUOHIA STREET, SUITE 308, KAPOLEI, HAWAII 96707
TELEPHONE: (808) 768-3486 • FAX: (808) 768-3487 • WEBSITE: http://envhonolulu.org

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DEPUTY DIRECTOR

ROSS S. TANIMOTO, P.E.
DEPUTY DIRECTOR

IN REPLY REFER TO:
WAS 11-52

March 31, 2011

The Honorable Marcus R. Oshiro, Chair
and Members of the Committee on Finance
House of Representatives
State Capitol
Honolulu, Hawaii 96813

Dear Chair Oshiro and Members:

Subject: Senate Bill 725, SD2, Relating to Solid Waste

The City and County of Honolulu's Department of Environmental Services (ENV) has concerns about inclusion of waste-to-energy facilities in Senate Bill (SB) 725, SD2, Relating to Solid Waste. The purpose of SB725, SD2 is to clarify that the solid waste management surcharge applies to all solid waste disposal facilities that receive solid waste for ultimate disposal through landfilling, incineration, or through a waste-to-energy facility, whether the waste is disposed of in-state or transferred out-of-state.

The City and County strongly recommends that waste-to-energy facilities be excluded from the solid waste management surcharge. Waste-to-energy facilities are recycling facilities, not solid waste disposal facilities. It is appropriate for the solid waste management surcharge to only apply to the solid waste that is ultimately disposed. In the case of a waste-to-energy facility, the majority of the waste is converted into energy but the ash that is a byproduct of the waste-to-energy is disposed of in the landfill. Only this waste should be subject to the surcharge because only this waste is ultimately disposed. Preserving the intent of the law to charge for waste disposal, not for recycling which should be supported, could be accomplished by removing all references to waste-to-energy facilities throughout the bill.

We interpret the proposed change to subsection (a)(2) to mean that the surcharge would be the responsibility of the facilities that receive and provide for out of state transfer of solid waste and not to facilities, like City and County transfer stations, that may provide interim handling of solid waste enroute to other facilities that would receive and provide for out of state transfer. If this is not the case, the language should

be revised to ensure that only the ultimate handler of the waste is responsible for the surcharge to prevent double charging and further increasing the costs for consumers.

Waste-to-energy facilities provide a valuable service via the recycling of waste and creation of an alternative energy source. Therefore, we would appreciate your recognition that waste-to-energy facilities are recycling facilities, not solid waste disposal facilities that should not be subjected to the solid waste management surcharge. Please amend Bill 725, SD2 to preserve this distinction and to support important and valuable recycling efforts.

Sincerely,

Timothy E. Steinberger, P.E.
for Director

Honua Power
renewable energy
SEVEN WATERFRONT PLAZA, 500 ALA MOANA BOULEVARD SUITE 7-220, HONOLULU, HAWAII 96813 TEL (808) 550-2877 FAX (808) 523-3122

March 31, 2011

VIA WEBSITE - http://www.capitol.hawaii.gov/emailtestimony/
Chair Marcus R. Oshiro
Vice Chair Marilyn B. Lee
House Committee on Energy and Environmental Protection
Hawaii State Capitol, Conf. Rm. 308
Honolulu, Hawaii 96813

Re: SB 725, SD2, Relating to Solid Waste
Hearing on Tuesday, April 1, 2011 at 2:00 p.m.

Dear Chair Oshiro and Vice Chair Lee:

Honua Power, LLC is a renewable energy developer based in Hawaii. We hereby submit this letter in OPPOSITION to SB 725, SD1, and proposed SD 2, Relating to Solid Waste. This bill unjustifiably "applies the solid waste management surcharge" under Hawaii Revised Statutes Chapter 342G to "waste-to-energy facilities." We are strongly opposed to any application of the solid waste management surcharge to the feedstock supplied to waste-to-energy facilities as a fuel. The solid waste management surcharge was **originally intended to apply** ***only*** to a "solid waste disposal facility," which, under Hawaii Revised Statutes Section 342G-1, is defined as

> "any facility which receives solid waste for **ultimate disposal** through **landfilling or incineration**. *This term does **not** include facilities utilized for **transfer, storage, processing, or remanufacturing for recycling or reuse, or bioconversion**.*"

Haw. Rev. Stat. §342G-1.

Note the specific exclusion for certain desirable activities. The foregoing exclusion makes sense because it discourages the "ultimate disposal," and, therefore, irrevocable loss of otherwise valuable renewable resources through landfilling and incineration. We are an isolated island economy with limited island resources. We have the dual problems of scarce landfill space and the highest fossil-fuel-derived energy costs in the United States. Past legislators understood this problem very well. To be sure, under the Integrated Solid Waste Management Plan for the state of Hawaii, landfilling and incineration are ranked as the ***lowest*** priorities and ***least desirable*** means by which to dispose of solid waste, while recycling, reuse or **bioconversion** of otherwise valuable resource materials are the afforded the highest priority of protection. See, Haw. Rev. Stat. §342G-2.

However, Senate Bill No. 725 now seeks to expand the surcharge to include these valuable fuel feedstocks which are used as sole fuel sources at "waste-to-energy facilities." This is completely incongruent with existing law. Senate Bill No.725 does nothing more than degrade and erode the policy protections set in place for such desirable activities by the original drafters of the Integrated Solid Waste Management Plan. Moreover, this very change is impossible to reconcile with the existing and proposed laws seeking to launch, support and promote our burgeoning renewable energy industry in Hawaii, at a

time when we all desperately need renewable energy to succeed for our isolated island economy.

While "incineration" is defined by Chapter 342G, and "Solid Waste Disposal Facility" is defined as disposal by "incineration," "waste-to-energy facility" is not defined anywhere in our Hawaii Revised Statutes. Without a single definition, and without a rational basis for inclusion in the solid waste management surcharge, the proposed amendment proves to be nothing more than an arbitrary and capricious change to generate slush funds. Furthermore, the instant amendment creates disruptive ambiguity within the existing laws and, consequently, creates tremendous financing risk to renewable energy developers, biomass fuel processors, and their lenders, alike.

To be sure, Chapter 342G was actually ***intended to promote*** bioconversion of the potential energy from one physical form into useful energy products of another form through a variety of technological processes. Specific examples of bioconversion processes referred to in the statute itself are **biogasification** and **pyrolysis**. A modern waste-to-energy facility would likely include a gasification or pyrolysis technology for the sole purpose of converting solid organic material (such as construction and demolition materials) into a gaseous bio-fuel used to fire gas boilers, gas turbines, or reciprocating engines for electricity generation.

In fact, gasification is ***precisely*** the process Honua Power intends to apply to the woody biomass and other bioconvertible materials received and processed by the PVT Landfill under an already executed feedstock contract over the next 22 plus years. Through this process, potential energy in the PVT Feedstock will be converted to renewable electrical energy for tens of thousands of HECO customers interconnected to the Honua waste-to-energy facility. The PVT construction and demolition feedstock is comprised mainly of organic material having valuable renewable energy content which can be transformed through vaporization of the organic compounds within the feedstock in a gasification chamber.

Honua Power will rely upon construction and demolition feedstock processed and prepared (picked, sorted, shredded and dried) by PVT, and delivered as a usable fuel product in order to fuel approximately 12 MW net of non-fossil fuel renewable electrical energy that will be supplied to the residents of Oahu. This renewable energy will reduce oil consumption by 177,000 barrels, light 12,000 homes, and count toward the state of Hawaii's renewable portfolio standard goals of 15% renewable energy generation by 2015 and 40% renewable energy generation by 2040.

This activity will not only prevent such valuable energy resources from taking up scarce landfill space indefinitely, thereby stabilizing the tipping fees and discouraging illegal landfills, but it will also relieve all of us from purchasing fossil-fuel-derived energy from foreign sources and delink the price of that energy from the price of oil forever. Any charge on feedstock materials, either at the collection and processing stage (PVT landfill), or the delivery and use stage (Honua's front gate), would be an intentional and deliberate attempt to tax and otherwise confound the development of renewable energy resources in our state at an incredibly vulnerable and critical time for the struggling industry. We can think of no better reasons to keep Chapter 342G intact in its present form.

Honua Power also has a 20 year Power Purchase Agreement ("PPA") with Hawaiian Electric Company setting forth fixed pricing for renewable electrical power received from Honua's facility. This

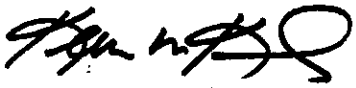
agreement has already been approved by the state of Hawaii Public Utilities Commission and the energy provided under the agreement has been held by the PUC, as a matter of law, to meet the definition of "renewable electrical energy" or "renewable energy" as defined under Hawaii Revised Statutes Section 269-91, so as to be counted toward the renewable portfolio standards for Hawaii.

However, there is no mechanism under the Honua PPA by which our company may raise the price for power charged to HECO, and, thereby, pass on to the ratepayers specific increases in the cost to produce the renewable electrical energy delivered by Honua. Therefore, the application of this surcharge at any point along Honua's fuel supply chain will adversely affect our company's ability to obtain project financing because it will erode our ability to meet the debt service coverage ratios ("DSCR") required by lenders.

It is very difficult for projects like ours to receive project finance funding necessary to construct the facility in the first place. "The project is too small, Hawaii is too remote and the project finance credit market is too tight." Nevertheless, Honua has succeeded in qualifying the project for financing. However, given the DSCR required by project finance lenders in the current marketplace that could very well change with this amendment. This surcharge will have the effect of raising the cost to produce renewable energy without any corresponding way for our company to recover that cost by increasing revenue. Any additional cost to a project like ours, at this time, will have the effect of quashing the successful completion of the project even though it is otherwise financeable.

There is no rational reason to expand the application of the surcharge at this time. As implemented by the Department of Health, the amendment to expand the surcharge is simply a tax on the production of renewable electrical energy. For these reasons, Honua Power opposes this bill.

Very truly yours,



Kevin Kondo
Managing Partner
Honua Power, LLC

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TO: Representative Marcus Oshiro
Chair, Committee on Finance
Hawaii State Capitol, Room 306
Via Facsimile: 586-6001

FROM: Gary M. Slovin

DATE: March 31, 2011

RE: S.B. 725, SD2 – Relating to Solid Waste
Hearing: April 1, 2011 at 2:00 p.m.; Agenda #1

Dear Chair Oshiro and Members of the Committee on Finance:

I am Gary Slovin, submitting comments on behalf of PVT Land Company, the owner and operator of the PVT Construction and Demolition Landfill ("PVT") in Nanakuli. PVT owns and operates Oahu's only landfill for the disposal of construction and demolition debris.

PVT Land Company **opposes** S.B. 725, SD2, which applies the solid waste surcharge to waste that is deposited in landfills, incinerators, or waste-to-energy facilities, whether the waste is disposed of in-state or transferred out of state.

This bill expands the application of the solid waste surcharge from disposal facilities to facilities that recycle waste and create renewable energy, such as waste-to-energy facilities. PVT believes such expansion is inconsistent with both the original intent of the law and state policy, both of which are to encourage the development of alternative fuels so as to minimize the state's dependence upon fossil fuels. Expanding this surcharge to waste-to-energy projects would tend to defeat this policy and would send a message to potential investors in such projects that the State is not committed to alternative energy. PVT has been working with an alternative energy company, Honua, that would take material from the PVT landfill and convert it to energy for Hawaiian Electric Company.

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A LIMITED LIABILITY LAW PARTNERSHIP LLP

Hawaii Revised Statutes Section 342G-63(c) indicates that the surcharge on the disposal of solid waste was created to fund and encourage waste reduction and recycling, not to tax and thereby discourage these activities. This bill has the opposite effect – it increases the cost of waste reduction, recycling and renewable energy facilities. It will tax companies like Honua whose activities to produce alternative energy should be encouraged. Given that the surcharge is supposed to fund and encourage waste reduction and recycling, it should not be imposed upon waste-to-energy facilities such as the one planned by Honua. Accordingly, we would request that Section 2 of the bill be amended to exclude waste to energy facilities as follows:

> Section 342G-62, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:
>
> "(a) There is established a solid waste management surcharge. The solid waste management surcharge shall be 35 cents per ton of solid waste that is:
>
> (1) Disposed of within the State at permitted or unpermitted solid waste disposal facilities, and incineration facilities~~, and waste-to-energy facilities~~; or . . .

PVT also notes that, as an alternative to the above amendment, it has been working with various stakeholders regarding a proposed draft of this measure, and is hopeful that a compromise between the interested parties can be reached.

Thank you very much for the opportunity to submit testimony on this measure.