



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

NEIL ABERCROMBIE  
GOVERNOR

RICHARD C. LIM  
DIRECTOR

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Statement of  
**RICHARD C. LIM**  
Director  
Department of Business, Economic Development, and Tourism  
before the  
**HOUSE COMMITTEE ON  
FINANCE**  
Friday, April 1, 2011  
5:00 PM  
State Capitol, Conference Room 308

in consideration of  
**SB 772 SD2, HD1**  
**RELATING TO BIOFUEL FACILITIES.**

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

The Department of Business, Economic Development, and Tourism (DBEDT) supports the intent of SB 772 SD2, HD1, which would expand the existing ethanol facility tax incentive to include other liquid biofuels and electricity generated from agricultural feedstocks, and has recommended modifications.

The original intent of the bill was to attract investment and jobs to Hawaii to construct biofuel facilities. There are several projects under development which, if constructed, could generate jobs and revenue in the short term and re-invigorate rural economies in the long term.

DBEDT evaluated the potential impact of the previous versions of this bill, and determined the biofuel facility tax credit was revenue neutral with no gain or loss overall, and that increased revenue would be generated in the near term during the construction phase and that no credits would be due until the facilities were operational and producing fuel.

We prefer the previous versions of this bill, which did not extend the incentive to electricity production facilities. We are concerned that the inclusion of electricity may affect both the revenue implications of the bill and its effectiveness in achieving the original intent. DBEDT has not evaluated the revenue impact of the addition of electricity production from agricultural feedstock. Also, there are several other initiatives to encourage electricity production from renewable resources. Therefore, we recommend removing the references to electricity production from of this incentive, and changing "bioenergy" to "biofuel."

We also recommend that the reporting requirements be modified. On page 12, beginning with line 3, we recommend that the biofuel producer report at a frequency specified by the director of DBEDT. Initially, annual reports from the producer may be sufficient, but as the industry becomes more established with more local facilities, quarterly or monthly reports may be necessary to determine the amount of tax credits that will be claimed.

In summary, although DBEDT strongly supports the expansion of the ethanol facility incentive to other biofuels, we have some concerns with HD1.

Thank you for the opportunity to offer these comments.

NEIL ABERCROMBIE  
GOVERNOR

BRIAN SCHATZ  
LT. GOVERNOR



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## HOUSE COMMITTEE ON FINANCE

### TESTIMONY OF THE DEPARTMENT OF TAXATION REGARDING SB 772, SD 2 HD 1 RELATING TO BIOFUEL FACILITIES

**TESTIFIER:** FREDERICK D. PABLO, DIRECTOR OF TAXATION (OR  
DESIGNEE)

**COMMITTEE:** FIN

**DATE:** APRIL 1, 2011

**TIME:** 3:00PM

**POSITION:** SUPPORT FOR DELAYED EFFECTIVE DATE AND  
TECHNICAL CONCERN

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This measure modifies the current ethanol production facilities tax credit to provide a tax credit for bioenergy production facilities.

**DEFER TO DBEDT ON POLICY** - The Department of Taxation (Department) defers to the Department of Business, Economic Development & Tourism on the non-tax technical and policy aspects of this measure.

The Department supports the encouragement and implementation of alternative energy systems in Hawaii in order to lessen the State's dependence on alternative energy. Hawaii's ability to generate its own energy from home will make the State more secure and less reliant on others.

**SUPPORT DELAYED EFFECTIVE DATE** - By delaying the ability of taxpayers to claim this credit until tax year 2014, it allows the Legislature to remove this credit from budget consideration during the current, trying fiscal year while continuing to incentivize the construction of a bioenergy production facility in Hawaii.

**TECHNICAL CONCERN** - The Department also notes that in its current form the credit is unworkable. This bill (and the current statute as well, it should be noted) calculates the dollar amount of the credit based on a percentage of the gallons produced. The credit needs to be a percentage of a monetary amount rather than a production amount in order to be calculable.

# TAXBILLSERVICE

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TAX FOUNDATION OF HAWAII

Honolulu, Hawaii 96813 Tel. 536-4587

**SUBJECT:** INCOME, Bioenergy facility tax credit

**BILL NUMBER:** SB 772, HD-1

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

**BRIEF SUMMARY:** Amends HRS section 235-110.3 to change the name of the ethanol facility tax credit to the bioenergy production facility tax credit including changing any references to ethanol to bioenergy. For each qualifying bioenergy production facility, the tax credit during the eight-year period shall be 30% of its annual nameplate capacity if the facility's nameplate capacity is greater than 500,000 gallons or, for an electricity generating facility, the credit shall be equal to 3 cents per kilowatt hour of the facility's annual nameplate capacity if the facility's annual nameplate capacity is greater than 5 million kilowatt hours.

Stipulates that in order to claim the credit, the qualifying bioenergy production facility shall utilize locally grown feedstock for at least 75% of its production output. A taxpayer may not claim a credit based on both the biofuel production capacity and the electricity generating capacity for the same facility. Defines "agricultural feedstock" as: (1) sugar cane and its byproducts, sweet sorghum, sorghum, sugar beets, woody biomass, grasses, vegetable or seed oil, fiber, and other materials grown on agricultural lands or other lands approved by the state for harvesting of biomass; and (2) unused byproducts of food, feed, fiber, or other products or for electricity generation, excluding used cooking oils. Defines "bioenergy" as biofuel produced from or electricity generated using agricultural feedstock. Defines "biofuel" as ethanol, biodiesel, renewable diesel, renewable jet fuel, or any other liquid fuel that meets the relevant fuel specifications of the American Society for Testing and Materials International and is produced from agricultural feedstock. Further amends the definitions of "investment," "nameplate capacity," "qualifying bioenergy production" and "qualifying bioenergy production facility" for purposes of the measure.

The credit shall be allowed to a biofuel production facility that commences production on or before January 1, 2014.

Repeals the limitation that the income tax credit shall be limited when the nameplate capacity of qualifying ethanol production reaches or exceeds 40 million gallons per year.

**EFFECTIVE DATE:** Tax years beginning after December 31, 2013

**STAFF COMMENTS:** The legislature by Act 289, SLH 2000, established an investment tax credit to encourage the construction of an ethanol production facility in the state. The legislature by Act 140, SLH 2004, changed the credit from an investment tax credit to a facility tax credit. This measure proposes to change the ethanol facility tax credit to a bioenergy facility tax credit and also proposes an electric generating facility tax credit of 3 cents per kilowatt hour of the facility's annual nameplate

capacity. It also repeals the limitation of the credits when the nameplate capacity reaches 40 million gallons per year.

While it has been almost ten years since the credit for the construction of an ethanol plant in Hawaii was enacted and ground has not broken yet, it appears that there are other far more efficient biofuels which could be developed and, therefore, the existing credit, which is specific to ethanol, might not be available to assist in the development of these other types of fuels.

While the idea of providing a tax credit to encourage such activities may have been acceptable a few years ago when the economy was on a roll and advocates could point to credits like those to encourage construction and renovation activities, what lawmakers and administrators have learned in these past few months is that unbridled tax incentives, where there is no accountability or limits on how much in credits can be claimed, are indeed irresponsible as the cost of these credits go far beyond what was ever contemplated. As an alternative, lawmakers should consider repealing this credit and utilize other strategies to encourage the development and use of alternate energy resources such as a loan program or the issuance of special revenue bonds for this purpose or perhaps even a specific appropriation of taxpayer dollars. At least lawmakers would have a better idea of what is being funded and hold the developers of these alternate forms of energy to a deliberate timetable or else lose the funds altogether. A direct appropriation would be preferable to a tax credit as it would provide some accountability for the taxpayers' funds being utilized to support this effort.

This proposal verifies what has been said all along about legislators latching onto the fad of the month without doing very serious research. While ethanol was the panacea of yesterday, lawmakers have learned that there are more down sides to the use of ethanol than there are pluses. Ethanol production demands more energy to produce than using a traditional petroleum product to produce the same amount of energy. The feedstock that is used to produce ethanol basically redirects demand for that feedstock away from traditional uses, causing those other products to substantially increase in price. Even algae, which was once thought of as a great alternative fuel, has been reported to consume more energy and resources than the energy that is produced from the substance. Lawmakers have a wealth of resource information at their finger tips through the Hawaii Natural Energy Institute upon which to draw and learn more about cutting edge research in this area.

Finally, when language is written so vaguely in an attempt to throw a broad net to attract all comers, that vague language can lead to misinterpretation and abuse as witnessed in the case of the tax credits for high technology research and investment. As such, this proposal should come under closer scrutiny instead of being left to interpretation by a taxpayer wanting to utilize the tax incentive to underwrite the cost of what would still be a questionable use of taxpayer dollars.

Digested 3/31/11

**SB 772 SD2 HD1**

**RELATING TO BIOFUELS FACILITIES**

**JOEL K. MATSUNAGA  
CHIEF OPERATING OFFICER & EXECUTIVE VP  
HAWAII BIOENERGY**

**April 1, 2011**

Chair Oshiro and Members of the House Committee on Finance:

I am Joel Matsunaga, testifying on behalf of Hawaii BioEnergy on SB 772 SD2 HD1, "Relating to Biofuel Facilities."

**SUMMARY**

Hawaii BioEnergy ("HBE") supports SB 772 SD2 HD1 (with amendments), which revises Section 235-110.3 of the Hawaii Revised Statutes by expanding the Ethanol Facility Credit to apply to other liquid fuels and power generation and enables facilities greater than 15 million gallons per year of production capacity to qualify. While HBE supports SB 772 SD2 HD1, the company believes some of the language contained in the proposed measure is unnecessarily limiting and could be amended to provide greater stimulus to the local economy and attract additional investment. Therefore, HBE respectfully submits that SB 772 SD2 HD1 should be amended to:

- Include algae as an eligible agricultural feedstock;
- Include a minimum 75% local feedstock requirement, contingent upon the availability of local biomass supplies;
- Remove the \$12 million annual credit cap.

HBE submits that the direct and indirect tax revenue generated by additional investments in biofuel and bioenergy facilities in the state will help to offset costs of the credit.

The amendments to HRS §235-110.3 as contained in SB772 SD2 HD1, as well as the amendments proposed below, will help to reduce the state's dependence on imported fossil

fuels as well as provide a needed economic stimulus to the state's agricultural and industrial sectors.

### **HAWAII BENEFITS FROM LOCAL BIOFUELS PRODUCTION**

Hawaii BioEnergy is a local company dedicated to strengthening the state's energy future through sustainable biofuel production from locally grown feedstocks. Among its partners are three of the larger land owners in Hawaii, who control over 430,000 acres of land. HBE and its partners would like to use significant portions of their land to address Hawaii's existing and growing energy needs.

One of the biofuel alternatives that HBE is pursuing is the production of jet fuel and other oil derivatives from micro-algae, and is already engaged in Phase II of a Hawaii-based, DARPA-funded algae project. Along with providing a local, renewable, and lower-carbon fuel source, expanded algae-based biofuel production will benefit the agricultural industry by providing a local source of protein for animal feed, fertilizers and other products. In addition to HBE's ongoing algae-based biofuel projects, the company is moving forward with plans to develop locally-produced, high-density fuels from sweet sorghum, eucalyptus and/or other dedicated energy crops. The feedstocks and conversion production pathways under consideration hold tremendous potential to displace fossil fuel imports given their relatively low input requirements, exceptionally high yields, and capacity to produce a portfolio of products including liquid fuels for transport and power generation while contributing feed, and other bio-based co-products to the local market.

In addition to the clear environmental and energy security benefits that local production would bring to bear, fostering Hawaii's biofuel industry would also provide needed economic stimulus to the state through direct investment, job creation, and demand for goods and services. Based on an independent analysis commissioned by HBE, it's projected that a large-

scale agricultural operation coupled with biofuels facility could provide up to 1,400 new direct, indirect and induced jobs, over \$115 million in value added or new wealth, and over \$17 million in annual tax revenue from combined indirect business and personal income taxes. Such benefits could be multiplied through additional investments in large-scale facilities supported through a bioenergy facility tax credit.

While the environmental, energy security and economic benefits are clear, the state's ability to secure the substantial capital required for large-scale commercial facilities requires providing a degree of assurance to private investors that they will be able to recover their investment within a reasonable time horizon. Extending the current Ethanol Facility Tax Credit to incorporate biofuels and bioenergy more broadly would help to attract a wider range of investors and provide the additional support needed to help offset the technology and capital risk inherent in the establishment of new industries, particularly those that require new technology. The credit would also be self-sustaining as the additional business and income tax revenue generated by the industry could be applied to future credits. As such, the legislation directly ties the incentives to the local market, enables the removal of the 40 million gallon cap as proposed in SB 772 SD2 HD1, and provides support to a range of advanced and more efficient biofuel and bioenergy production technologies.

#### **PROPOSED AMENDMENTS TO SB 772 SD2 HD1**

While HBE supports the extension of the Ethanol Facility Credit to include a range of biofuel and bioenergy production facilities, the company would like to propose the following amendments to SB 772 SD2 HD1 in order to maximize the credit's reach and impact:

- To incorporate the words "locally produced" in Section 2 (3) that states "The qualifying bioenergy production facility uses agricultural feedstock for at least seventy-five per cent of its production output" when available;
- To incorporate "algae" in Section 2 (b) (1) under the definition of "agricultural feedstock";



- To eliminate the \$12 million annual credit cap.

HBE believes that SB772 SD2 HD1, with the proposed amendments, would allow for greater firm participation, attract agriculturally-based, high tech investment, and generate additional tax revenue for the state.

#### **CONCLUDING REMARKS**

HBE is moving forward with projects that will help to address Hawaii's energy future and believes that SB 772 SD2 HD1, with the proposed amendments, will help to accelerate and expand Hawaii's bio-based renewable energy economy.

Based on the aforementioned, Hawaii BioEnergy respectfully requests your support for SB 772 SD2 HD1, with the above referenced amendments.

Thank you for the opportunity to testify.

# HAWAII RENEWABLE ENERGY ALLIANCE

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## TESTIMONY OF WARREN BOLLMEIER ON BEHALF OF THE HAWAII RENEWABLE ENERGY ALLIANCE BEFORE THE HOUSE COMMITTEE ON FINANCE

### SB 772 SD2 HD1, RELATING TO BIOFUEL FACILITIES

April 1, 2011

Chair Oshiro, Vice-Chair Lee and members of the Committee, I am Warren Bollmeier, testifying on behalf of the Hawaii Renewable Energy Alliance (“HREA”). HREA is a nonprofit corporation in Hawaii, established in 1995 by a group of individuals and organizations concerned about the energy future of Hawaii. HREA’s mission is to support, through education and advocacy, the use of renewables for a sustainable, energy-efficient, environmentally-friendly, economically-sound future for Hawaii. One of HREA’s goals is to support appropriate policy changes in state and local government, the Public Utilities Commission and the electric utilities to encourage increased use of renewables in Hawaii.

The purpose of SB 772 SD2 HD1 is to amend the existing ethanol facility income tax credit to include other bioenergy production and to enable larger facilities to be eligible for the tax incentive.

HREA **supports the intent of SB 772 SD2 HD1** as it could assist developers of biofuel/bioenergy facilities in Hawaii and thereby support our state’s Clean Energy objectives. However, we **cannot support the Committee’s proposed HD1** for the following reasons:

- (1) The measure proposes a much broader scope for “bioenergy production facilities,” and we believe it exceeds the scope of SB 772 as “Relating to Biofuel Facilities.”
- (2) We see as problematic the inclusion of a number of potential biofuels, which need further definition and clarification as to which meet ASTM or other appropriate standards. Specifically, the encouragement of un-standardized fuels could reek havoc in the market place.
- (3) The method for calculation of the actual production credit is unclear, as well as to how a potential queue for project applicants would be handled.
- (4) While it may be desirable to encourage projects with gaseous biofuels and biofuels for generation of electricity, their inclusion in this measure would require a significant revision, or better yet a separate measure (s).
- (5) With respect to biomass-to-electricity projects, we believe other support mechanisms may be more efficacious, e.g., utility RFPs for firm renewable energy projects, and possibly feed-in tariffs (which currently are for wind, solar and in-line hydro, but possibly could be expanded to include biomass-to-electricity projects).

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Thus, we respectfully prefer the **SB 772 SD2** as the better vehicle to move forward with the goals of assisting biofuel facilities. We have attached our detailed comments (with explanations) in **our proposed HD2** (which includes incorporation of comments received from DBEDT/State Energy Office) to this measure for consideration by the Committee. Our proposed revisions are summarized below; detailed comments are included in the proposed HD2 to facilitate further discussion. Specifically, we:

- (1) believe the measure should focus on ethanol and biodiesel that meet the appropriate ASTM standards, or other liquid fuels that are approved by the Director of the Department of Business, Economic Development and Tourism.
- (2) support a production credit, that is not based on “nameplate capacity,” but on the actual production in gallons per year.
- (3) believe if a developer/owner elects to take the production credit, he should not be eligible to take any other state tax incentive.
- (4) recommend 30 cents/gallon as an appropriate amount for the production credit that would be paid for a period of no longer than 8 years.
- (5) support the goal of achieving 100% of production utilizing appropriate production facilities and locally-sourced feedstocks. Ideally, over time, the feedstocks will be “energy crops” grown in Hawaii in concert with appropriate amounts of agricultural residues and wastes, including recycled waste cooking oils and greases.
- (6) support a sunrise date as soon as possible for this measure with no sunset date.
- (7) support no CAPs on the total amount of credits to be paid annually. Such CAPs would likely require some sort of a “queuing system” that could become problematic for a number of reasons, but especially because investors would likely be wary of an additional risk to the already risky-enough business of developing energy projects in Hawaii. We also recognize that there may need to be CAPs and thus we stand ready to work with DBEDT and other energy stakeholders to design and implement an appropriate “queuing” system.

We respectfully request that you pass this measure out with our recommended amendments.

Thank you for this opportunity to provide comments in support of this measure.

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THE SENATE  
TWENTY-SIXTH LEGISLATURE, 2011  
STATE OF HAWAII

**S.B. NO.** 772  
S.D. 2  
HREA-  
Proposed  
HD2

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## A BILL FOR AN ACT

RELATING TO BIOFUEL FACILITIES.

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

SECTION 1. Senate Concurrent Resolution No. 132, S.D. 1 (2009), established a task force to determine the economic contributions of the construction industry in Hawaii and to develop a series of proposals for state actions to preserve and create new jobs in the local construction industry. This Act implements one of the task force's proposals in conjunction with the Abercrombie administration's support for state actions to create new jobs in Hawaii's construction industry.

In addition, in 2010, the senate committee on economic development and technology and the house committee on economic revitalization, business, and military affairs convened an informal small business discussion group to address the most critical issues facing the small business sectors within Hawaii's economy. Representatives from the Chamber of Commerce of Hawaii, construction and trades industries, community nonprofits, the agricultural sector, food and restaurant industries, retailing, the science and technology sector, the commercial transportation industry, and interested stakeholders developed a package of bills that address the most pressing problems facing Hawaii's small business community.

The purpose of this Act is to support the findings of the small business working group and the recommendations proposed by the construction industry task force to enhance Hawaii's economic vitality through renewable energy resources that are self-sufficient, affordable, and produced locally.

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SECTION 2. Section 235-110.3, Hawaii Revised Statutes, is amended to read as follows:

"§235-110.3 ~~[Ethanol]~~ Biofuel production facility tax credit. (a) Each year during the credit period, there shall be allowed to each taxpayer subject to the taxes imposed by this chapter, ~~[an ethanol]~~ a biofuel production facility tax credit that shall be applied to the taxpayer's net income tax liability, if any, imposed by this chapter for the taxable year in which the credit is properly claimed.

For each ~~[qualified ethanol]~~ qualifying biofuel production facility, the annual dollar amount of the ~~[ethanol]~~ biofuel production facility tax credit during the eight-year period shall be equal to ~~[thirty per cent of its nameplate capacity if the nameplate capacity is greater than five hundred thousand but less than fifteen million gallons.]~~ \$0.30 per gallon of production. A taxpayer may claim this credit for each qualifying ~~[ethanol]~~ biofuel production facility; provided that:

(1) The claim for this credit by any taxpayer of a qualifying ~~[ethanol]~~ biofuel production facility shall not exceed one hundred per cent of the total of all investments made by the taxpayer in the qualifying ~~[ethanol]~~ biofuel production facility during construction of the facility and the credit period;

Note: since this is a production tax credit, you don't need to specify a nameplate capacity

(3) The qualifying biofuel production facility shall be located within the State and use locally sourced feedstocks for at least seventy-five per cent of its production output; Note: locally "grown" is too restrictive. By amending to "locally sourced" allows the facility developer/operator to take advantage of various waste residues and other organic materials. This can be particularly important as the facility developer/operator is working with ag growers to produce locally grown feedstocks, such as jatropha and palm oil.

~~[(3)]~~ (4) The qualifying ~~[ethanol]~~ biofuel production facility ~~[is in]~~ commences production on or before January 1, 2020; and

~~[(4)]~~ (5) No taxpayer that claims the credit under this section shall claim any other state investment tax credit under this chapter for the same taxable year. Note: as written, this requirement is unnecessarily too restrictive. For example, developer/operator should be able to apply for federal biofuel incentives, as appropriate

(b) As used in this section:

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"Credit period" means a maximum period of eight years beginning from the first taxable year in which the qualifying [~~ethanol~~] biofuel production facility begins production

"Investment" means a nonrefundable capital expenditure related to the development and construction of any qualifying [~~ethanol~~] biofuel production facility, including processing equipment, waste treatment systems, pipelines, and liquid storage tanks at the facility or remote locations, including expansions or modifications. Capital expenditures shall be those direct and certain indirect costs determined in accordance with section 263A (with respect to capitalization and inclusion in inventory costs of certain expenses) of the Internal Revenue Code, relating to uniform capitalization costs, but shall not include expenses for compensation paid to officers of the taxpayer, pension and other related costs, rent for land, the costs of repairing and maintaining the equipment or facilities, inventory, training of operating personnel, utility costs during construction, property taxes, costs relating to negotiation of commercial agreements not related to development or construction, or service costs that can be identified specifically with a service department or function or that directly benefit or are incurred by reason of a service department or function. For the purposes of determining a capital expenditure under this section, the provisions of section 263A of the Internal Revenue Code shall apply as it read on March 1, 2004. For purposes of this section, investment excludes land costs and includes any investment for which the taxpayer is at risk, as that term is used in section 465 (with respect to deductions limited to amount at risk) of the Internal Revenue Code [~~(with respect to deductions limited to amount at risk)~~].

"Net income tax liability" means net income tax liability reduced by all other credits allowed under this chapter.

"Qualifying [~~ethanol~~] biofuel production" means ethanol that meets the ASTM D4806 standard, biodiesel that meets the ASTM D6751 standard, and any other liquid fuel determined by the director of business, economic development and tourism to be a commercially available liquid fuel capable of displacing

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petroleum fuel, produced from renewable~~[, organic]~~ feedstocks or waste materials, including fats, oils, grease, algae, and municipal solid waste. All qualifying production shall be fermented, distilled, transesterified, gasified, pyrolized, or produced by physical chemical, biochemical, or thermochemical-conversion methods, such as reformation and catalytic conversion, ~~and dehydrated~~ at the facility. Note: it is very important to have fuels that meet (or exceed) ASTM standards. In addition, these recommended amendments make the bill technology-neutral with respect to fuel type, and focuses on commercial fuel production processes.

"Qualifying ~~[ethanol]~~ biofuel production facility" or "facility" means a facility located in Hawaii which produces ~~[motor]~~ fuel grade ~~[ethanol]~~ biofuel meeting the ~~[minimum]~~ relevant specifications by the American Society of Testing and Materials ~~[standard D-4806, as amended.]~~ for that particular fuel. Note: at this time, we believe the amendments to allow this credit to apply to other liquid fuels is appropriate. If the intent was to broaden the scope to include gaseous fuels, a major revision, if not a totally separate policy/bill would be required.

(c) In the case of a taxable year in which the cumulative claims for the credit by the taxpayer of a qualifying ~~[ethanol]~~ biofuel production facility ~~[exceeds]~~ exceed the cumulative investment made in the qualifying ~~[ethanol]~~ biofuel production facility by the taxpayer, only that portion that does not exceed the cumulative investment shall be claimed and allowed.

(d) The department of business, economic development, and tourism shall:

- (1) Maintain records of the total amount of investment made by each taxpayer in a facility;
- (2) Verify the amount of the qualifying investment;
- (3) Total all qualifying and cumulative investments that the department of business, economic development, and tourism certifies; and
- (4) Certify the total amount of the tax credit for each taxable year and the cumulative amount of the tax credit during the credit period.

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Upon each determination, the department of business, economic development, and tourism shall issue a certificate to the taxpayer verifying the qualifying investment amounts, the credit amount certified for each taxable year, and the cumulative amount of the tax credit during the credit period. The taxpayer shall file the certificate with the taxpayer's tax return with the department of taxation. Notwithstanding the department of business, economic development, and tourism's certification authority under this section, the director of taxation may audit and adjust certification to conform to the facts.

If in any year, the annual amount of certified credits reaches [\$12,000,000] \$ \_\_\_\_\_ in the aggregate, the department of business, economic development, and tourism shall immediately discontinue certifying credits and notify the department of taxation. In no instance shall the total amount of certified credits exceed [\$12,000,000] \$ \_\_\_\_\_ per year. Notwithstanding any other law to the contrary, this information shall be available for public inspection and dissemination under chapter 92F.

(e) If the credit under this section exceeds the taxpayer's income tax liability, the excess of credit over liability shall be refunded to the taxpayer; provided that no refunds or payments on account of the tax credit allowed by this section shall be made for amounts less than \$1. All claims for a credit under this section [~~must~~] shall be properly filed on or before the end of the twelfth month following the close of the taxable year for which the credit may be claimed. Failure to comply with the foregoing provision shall constitute a waiver of the right to claim the credit.

(f) If a qualifying [~~ethanol~~] biofuel production facility or an interest therein is acquired by a taxpayer prior to the expiration of the credit period, the credit allowable under subsection (a) for any period after [~~such~~] the acquisition shall be equal to the credit that would have been allowable under subsection (a) to the prior taxpayer had the taxpayer not disposed of the interest. If an interest is disposed of during any year for which the credit is allowable under subsection (a), the credit shall be allowable between the parties on the basis of the number of days during the year the interest was held by each



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taxpayer. In no case shall the credit allowed under subsection (a) be allowed after the expiration of the credit period.

~~[(g) Once the total nameplate capacities of qualifying ethanol production facilities built within the State reaches or exceeds a level of forty million gallons per year, credits under this section shall not be allowed for new ethanol production facilities. If a new facility's production capacity would cause the statewide ethanol production capacity to exceed forty million gallons per year, only the ethanol production capacity that does not exceed the statewide forty million gallon per year level shall be eligible for the credit.]~~

~~(h)~~ (g) Prior to construction of any new qualifying ~~[ethanol]~~ biofuel production facility, the taxpayer shall provide written notice of the taxpayer's intention to begin production of a biofuel at a qualifying ~~[ethanol]~~ biofuel production facility.

**Note: the beginning of the tax credit period should be with the start of actual "production" not construction of the facility.**

The information shall be provided to the department of taxation and the department of business, economic development, and tourism on forms provided by the department of business, economic development, and tourism, and shall include information on the taxpayer, facility location, facility production capacity, anticipated production start date, and the taxpayer's contact information. Notwithstanding any other law to the contrary, this information shall be available for public inspection and dissemination under chapter 92F.

~~[(i)]~~ (h) The taxpayer shall provide written notice to the director of taxation and the director of business, economic development, and tourism within thirty days following the start of production. The notice shall include the production start date and expected ~~[ethanol fuel]~~ biofuel production for the next twenty-four months. Notwithstanding any other law to the contrary, this information shall be available for public inspection and dissemination under chapter 92F.

~~[(j)]~~ ( Note: if there are no nameplate requirements, then there is no need for this paragraph.

~~[(k)]~~ (j) At a frequency and in a manner specified by the director of business, economic development and tourism ~~[Each calendar year during the credit period]~~, the taxpayer shall provide information ~~to the director of business,~~

## HAWAII RENEWABLE ENERGY ALLIANCE

46-040 Konane Place #3816, Kaneohe, HI 96744 – Telephone/FAX: 247-7753 – Email: wsb@lava.net

~~economic development, and tourism~~ on the number of gallons [~~of ethanol~~] by type of biofuel produced and sold during the previous [~~calendar year~~] period, how much was sold in Hawaii versus overseas, the percentage of Hawaii-grown feedstocks and other feedstocks used for [~~ethanol~~] biofuel production, the number of employees of the facility, and the projected number of gallons of [~~ethanol~~] biofuel production for the succeeding [~~year~~] period.

~~[(1)]~~ (k) In the case of a partnership, S corporation, estate, or trust, the tax credit allowable is for every qualifying [~~ethanol~~] biofuel production facility. The cost upon which the tax credit is computed shall be determined at the entity level. Distribution and share of credit shall be determined pursuant to section 235-110.7(a).

~~[(m)]~~ (1) Following each year in which a credit under this section has been claimed, the director of business, economic development, and tourism shall submit a written report to the governor and legislature regarding the production and sale of [~~ethanol~~] biofuel. The report shall include:

(1) The number and location of qualifying [~~ethanol~~] biofuel production facilities in the State;

(2) The total number of gallons of [~~ethanol~~] biofuel produced and sold during the previous year; and

(3) The projected number of gallons of [~~ethanol~~] biofuel production for the succeeding year.

~~[(n)]~~ (m) The director of taxation shall prepare forms that may be necessary to claim a credit under this section. Notwithstanding the department of business, economic development, and tourism's certification authority under this section, the director may audit and adjust certification to conform to the facts. The director may also require the taxpayer to furnish information to ascertain the validity of the claim for credit made under this section and may adopt rules necessary to effectuate the purposes of this section pursuant to chapter 91."

SECTION 3. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

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SECTION 4. This Act shall take effect on January 1, 2050, and shall apply to taxable years beginning after December 31, 2012.

**Report Title:**

Construction Task Force (2010); Biofuel Facilities; Certified Credits

**Description:**

Expands the ethanol facility tax credit to include various biofuels; renames the tax credit as the biofuel production facility tax credit; changes the determination of the biofuel production facility tax credit from thirty percent of nameplate capacity to an unspecified amount per gallon of production; requires a qualifying facility to be located within the State and to utilize locally grown feedstock for at least seventy-five percent of its production output; replaces the amount of certified credits from \$12 million with an unspecified amount; amends a reporting requirement by a taxpayer claiming the tax credit; and removes the 40 million gallon production per year cap. Effective 1/1/2050. (SD2)

*The summary description of legislation appearing on this page is for informational purposes only and is not legislation or evidence of legislative intent.*

**PACIFIC WEST ENERGY LLC**

**1212 NUUANU #1704**

**HONOLULU, HI 96817**

**Tel. 808-927-3608**

March 31, 2011

Representative Marcus R. Oshiro, Chair  
Representative Marilyn B. Lee, Vice Chair  
And Members of the Committee on Finance  
Hawaii State Capitol  
415 S. Beretania  
Honolulu, HI 96813

Re: SB 772 SB2 HD1 – Relating to Biofuel Facilities

Dear Chair Oshiro and Members of the Committee,

My name is William Maloney and I am the President and Chief Executive Officer of Pacific West Energy LLC and its affiliate, Pacific West Energy Kauai LLC, the developers of an integrated agriculture to green power and biofuel project on Kauai. I testify today in support of SB 772 SD2 HD1.

Pacific West Energy LLC continues to intend to construct an integrated bioenergy production facility on Kauai, with the first phase being an integrated renewable energy electricity facility using agricultural biomass, collectively an investment in excess of \$100 million, with later phases to incorporate biofuel production and solar power generation. The total project cost will exceed \$150 million. We recently acquired the former Kekaha sugar mill industrial site. We are progressing positively with land lease negotiations, and negotiating contract farming agreements, and working on a cooperative farming structure with Native Hawaiians to restore and maintain agricultural lands vested in the Department of Hawaiian Homelands. We have entered into several contracts in support of this project. We were recently selected by the Kauai Island Utility Cooperative (“KIUC”) under a solicitation for biomass energy providers and expect to conclude the Purchase Power Agreement (“PPA”) in accordance with the timeline of the KIUC solicitation by end-May.

With advances in technology it is apparent that opportunities exist to produce a range of renewable fuels in Hawaii, not just ethanol, from local agricultural feedstocks. We support the extension of the Ethanol Facility Tax Credit to cover the all agricultural based bioenergy production, as whether agricultural feedstocks are used to make fuel to power electricity generating equipment or to directly produce electricity, the outcomes are the same, the State becomes more energy self-sufficient, and in the process, creates employment in a revised agricultural sector, and displaces expensive imported fossil fuels. The original Ethanol Facility Tax Credit was specific to motor fuel use – and this important market for biofuels still needs to be satisfied, however, renewable electricity production, particularly in light of the efforts being made in the transportation sector towards electric vehicles, has become a potentially viable market for Hawaiian agricultural based energy production. So again, whether the intermediate step of producing biofuels for the electricity market is undertaken, or direct renewable electricity is produced, they should be similarly incentivized, which SB 772 SD2 HD1 does.

In testimony from interested parties in previous Committees certain questions have arisen about whether the incentive should simply be a production incentive, e.g., \$0.30 per gallon of

biofuel produced. As one of the parties involved in the creation of the original incentive, the reason the incentive was structured as an investment incentive and not a straight production incentive was because the State Attorney General believed this was necessary to avoid US Constitution Commerce Clause issues relating to State production incentives. The State had defended a tax incentive relating to local liquor production several years ago before the Supreme Court and lost the case. The recommendation and the resultant language was that an incentive relating to an investment in a new facility would not violate the Commerce Clause, while an incentive that simply provided a direct production credit to favor in-State production over out-of-State production would violate the Commerce Clause.

I urge the Committee to support SB772 SD2 HD1, as I believe it will stimulate significant new investment in both agricultural production and manufacturing facilities, be revenue positive, especially important in the near-term as the incentive is backward loaded, meaning all the investments and job creation will necessarily precede the payment of any tax credits, and the incentive will have a real positive impact on the State's priorities of reducing our dependence on imported petroleum in both the transportation and electricity sectors.

Sincerely,

*William Maloney*  
William Maloney  
President & Chief Executive Office  
Pacific West Energy LLC

House of Representatives  
Committees on Finance  
April 1, 2011  
5:00 p.m., Room 308

Statement of the Hawaii Carpenters Union on  
SB 772, SD2, HD1, Relating to Biofuel Facilities

The Hawaii Carpenters Union supports SB 772, SD2, HD1 with an immediate effective date for the provision of tax credits to qualified developers and operators of biofuel facilities.

Biofuel production is a growth industry of the type planners wish for. It will stimulate construction, as the Construction Industry Task Force found. It will provide incentives for industrial and agricultural production that provides a wide range of job types. It will reduce dependence on fossil fuels, which has already threatened economic recovery with price spikes. It has positive environmental impacts, and will be compatible with, if not eventually essential to, the visitor industry.

Among proposals for incentives to provide jobs, this industry has the advantage of being based on tangible production facilities. While there are no guarantees that any industry will survive in place, tangible industrial plant assets provide an anchor. For this industry, the Hawaii customer base, the room for expansion, and price levels for fuel in Hawaii, all point to longer term returns and jobs.

This Bill adjusts to new technologies, and a higher potential for Hawaii production than was hoped for with ethanol. The need that ethanol was to fill still remains. Ethanol production itself remains as a possibility.

Were direct appropriations available as a choice, we might favor that method of jump starting this industry, but we do not see that choice. We urge your favorable action now, for implementation upon legislative approval.

Thank you for this opportunity to testify in support of SB 772, SD2, HD1.



**HOUSE COMMITTEE ON FINANCE**

Testimony of  
**CHRISTOPHER ELDRIDGE**  
Partner, Aina Koa Pono, LLC

April 1, 2011, 5:00 p.m.  
House Conference Room 308

**TESTIMONY IN SUPPORT OF SB 772, SD 2, HD 1 RELATING TO BIOFUEL FACILITIES**

Chair Oshiro and Members of the Committee:

Aina Koa Pono ("AKP") strongly supports SB 772, SD 2, HD 1, Relating to Biofuel Facilities. AKP is a locally-owned biofuel company which is building a biofuel plant in Ka`u, Hawaii. We recently entered into a power purchase agreement with HECO to produce biodiesel from locally grown feedstock. But we still need to obtain financing for the plant. SB 772, SD 2, HD 1 will help us obtain financing for the plant. Once we obtain financing we will be able to build the plant. That will in turn kick-start a local biofuel industry in Hawai'i which will provide many returns for the state, including:

- **Job Growth.** Large-scale biofuel production facilities will provide hundreds of high-paying permanent jobs for the state. AKP estimates that its planned Ka`u facility will create 200 such permanent jobs.
- **Productive Land Use.** Biofuel will return thousands of acres of currently-fallow land to agricultural production. This will help reinvigorate Hawai'i's agricultural economy.
- **Clean Energy.** Large biofuel production facilities are an integral part of Hawai'i's clean energy future, and will provide the state with insulation from spikes in the price of fossil fuels.

Thank you for the opportunity to provide this testimony. Providing a tax credit to biofuel production facilities will provide returns to the state far in excess of what it spends on the credit. Previous biofuel projects have failed because they have not been able to obtain adequate financing. This credit is critical to ensure the development of a viable biofuel industry in Hawai'i.

**TESTIMONY OF DAVID TARNAS  
IN SUPPORT OF SB 772 SD2 HD1  
HEARING BEFORE THE HOUSE FINANCE COMMITTEE  
FRIDAY, APRIL 1, 2011  
5PM IN CONFERENCE ROOM 308  
STATE CAPITOL**

Aloha Chairman Oshiro, Vice-Chair Lee and members of the Committee.

My name is David Tarnas and I work with SunFuels Hawaii, LLC, a biofuels company that is exploring opportunities for developing a biomass-to-liquid (BTL) project on the island of Hawaii.

I request that the Committee support SB 772 SD2 HD1 which expands the ethanol facility production tax credit to include all biofuels, and other bioenergy production facilities.

Since this is a production tax credit, a company like ours will need to utilize other financing means to pay for the development of the biofuel or bioenergy production facility. It is appropriate that the private sector financing bears most of the business risk in such an endeavor. Nonetheless, this production tax credit will certainly enhance the operating financials for the biofuel or bioenergy company. This will help build the industry to enable Hawaii to achieve the goals of the Hawaii Clean Energy Initiative.

Mahalo.