TESTIMONY OF
THE DEPARTMENT OF THE ATTORNEY GENERAL
TWENTY-SIXTH LEGISLATURE, 2012

ON THE FOLLOWING MEASURE:
H.B. NO. 2262, RELATING TO ENERGY.

BEFORE THE:
HOUSE COMMITTEES ON ENERGY AND ENVIRONMENTAL PROTECTION AND ON AGRICULTURE

DATE:	Wednesday, February 8, 2012	**TIME:**	8:15 a.m.
LOCATION:	State Capitol, Room 312		
TESTIFIER(S):	David M. Louie, Attorney General, or Mary Bahng Yokota, Deputy Attorney General		

Chairs Coffman and Tsuji and Members of the Committees:

The Department of the Attorney General offers the following comments on this bill.

This bill creates the renewable fuel feedstock income tax credit and amends the ethanol facility income tax credit to the renewable fuels facility tax credit, which applies to various specified renewable fuels, including but not limited to ethanol, and reduces the aggregate cap amount of the tax credit.

This bill may be constitutionally challenged under the Commerce Clause, Equal Protections Clause, and/or the Privileges and Immunities Clause of the United States Constitution.

I. Commerce Clause

Under this bill, to qualify for the renewable fuel feedstock income tax credit, the taxpayer must, in part, provide feedstock "*grown in the State*" to a certified renewable fuels production facility for the production of renewable fuels. Page 1, lines 10 through 12. Further, the amount of the tax credit is a percentage of the taxpayer's "operational expenditures," which is defined as "expenses directly associated with the production of feedstock *grown in the State* for the production of renewable fuels" (emphasis added). Page 2, lines 9 through 12.

Similarly, to qualify for the renewable fuels facility tax credit, "[n]ot less than fifty per cent of the feedstock used in the production of renewable fuels by the qualifying renewable fuels production facility must be *sourced in the State*." Page 5, lines 13 through 16. If "not less than ten per cent of the feedstock used by the qualifying renewable fuels production facility is *sourced in the State*," the taxpayer may qualify for a reduced amount of the tax credit. Page 5, line 20, through page 6, line 4. Otherwise, taxpayer does not qualify for the tax credit.

These requirements that the feedstock be "grown in the State" or "sourced in the State" may be subject to constitutional challenge based on the Commerce Clause. A cardinal rule of Commerce Clause jurisprudence is that "[n]o State, consistent with the Commerce Clause, may 'impose a tax which discriminates against interstate commerce . . . by providing a direct commercial advantage to local business.'" Bacchus Imports, Ltd. v. Dias, 468 U.S. 263, 268 (1984) *citing* Boston Stock Exchange v. State Tax Comm'n, 429 U.S. 318, 329 (1977). At issue in Bacchus was the Hawaii liquor tax, which was originally enacted in 1939 to defray the costs of police and other governmental services. Because the Legislature sought to encourage development of the Hawaiian liquor industry, it enacted an exemption from the liquor tax for okolehao (a brandy distilled from the root of the ti plant, an indigenous shrub of Hawaii) and for certain fruit wine manufactured in Hawaii. The U.S. Supreme Court concluded that the exemption violated the Commerce Clause because the exemption had both the purpose and effect of discriminating in favor of local products. The same analysis may apply to this bill.

Thus, we recommend that the "grown in the State" and "sourced in the State" requirement be deleted from the bill.

II. Equal Protection Clause and Privileges and Immunities Clause

Under this bill, to qualify for the renewable fuel feedstock tax credit, the taxpayer must be "domiciled or based in the State." Page 1, line 13. Similarly, to qualify for the renewable fuels facility tax credit the taxpayer must be "domiciled or based in the State." Page 4, lines 3 through 4.

Pursuant to section 235-1, Hawaii Revised Statutes, "every individual domiciled in the State" is a "resident" for the purposes of State income taxes. It is unclear what is meant by "based in the State." If this also means that the taxpayer must be a resident, this bill is facially discriminatory in that it restricts the tax credit to Hawaii residents. A court may conclude that the credit is unconstitutional because the bill does not expressly articulate a legitimate government interest served by the legislation sufficient to withstand constitutional challenge based on the Equal Protection and/or Privileges and Immunities Clauses of the United States Constitution.

The Equal Protection Clause prohibits discrimination against a nonresident based solely on residency. See, e.g., Williams v. Vermont, 472 U.S. 14 (1985) (use tax credit for sales taxes paid on cars purchased in other states invalidated because it was only available to Vermont residents). The Hawaii Supreme Court has recognized that the Equal Protection Clause applies where a tax operates unequally on persons or property of the same class. In re Swann, 7 Haw. App. 390, 776 P.2d 395 (1989).

Similarly, under the Privileges and Immunities Clause, a state may not impose higher taxes on a nonresident individual than it imposes on its own citizens. However, a discriminatory tax could be sustained if legitimate reasons for the tax exist and the discrimination bears a substantial relation to those reasons. Lunding v. New York Tax Appeals Tribunal, 522 U.S. 287 (1998) (alimony deduction for residents only struck down as violating Privileges and Immunities Clause).

If the bill was not intended to require the taxpayers eligible for the tax credits to be residents, we recommend that the bill be clarified to reflect the intent of the bill. If the bill was intended to require the taxpayers eligible for the tax credits to be residents, to strengthen the bill from possible constitutional challenge, we recommend that either (1) the requirement be deleted or (2) a legitimate government purpose substantially related to that purpose be articulated within the preamble of the bill.

NEIL ABERCROMBIE
GOVERNOR

BRIAN SCHATZ
LT. GOVERNOR

FREDERICK D. PABLO
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To: The Honorable Denny Coffman and Clift Tsuji, Chairs,
and members of the House Committee on Energy and Envrionmental Protection
and the House Committee on Agriculture

Date: Wednesday, February 8, 2012
Time: 8:15 A.M.
Place: Conference Room 312, State Capitol

From: Frederick D. Pablo, Director
Department of Taxation

Re: H.B. No. 2262, Relating to Energy

The Department of Taxation (Department) appreciates the intent of H.B. No. 2262 and offers the following information and comments for your consideration.

H.B. 2262 creates a new tax credit for the production of agricultural feedstock for use in a renewable fuel production facility. The measure also broadens the existing ethanol production facility tax credit to include facilities that produce other renewable fuels.

As written, the measure raises several issues that should be clarified before adoption. For example, the new feedstock tax credit proposal does not specify when the taxpayer may claim the credit, does not require the calculation of the tax credit amount to correspond with operational expenditures of a specific time period; and is unclear as to whether additional credit may be claimed beyond two years.

In both the feedstock tax credit and fuel production facility tax credit sections of the bill, there is language requiring that the taxpayer be domiciled or based in the State. The Department notes that the requirement may run afoul of the Commerce Clause of the Constitution of the United States, but defers to the Department of the Attorney General for guidance.

The Department also notes that aggregate caps applied against all taxpayers, for both tax credits, is very difficult for the Department to administer and results in uncertainty for taxpayers. One unintended consequence of this type of cap is an unbalanced and unfair distribution of tax credits amongst taxpayers.

Thank you for the opportunity to provide comments.

NEIL ABERCROMBIE
Governor

RUSSELL S. KOKUBUN
Chairperson, Board of Agriculture

State of Hawaii
DEPARTMENT OF AGRICULTURE
1428 South King Street
Honolulu, Hawaii 96814-2512
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TESTIMONY OF RUSSELL KOKUBUN
CHAIRPERSON, BOARD OF AGRICULTURE

BEFORE THE HOUSE COMMITTEE ON ENERGY & ENVIRONMENTAL PROTECTION
AND
HOUSE COMMITTEE ON AGRICULTURE

WEDNESDAY, FEBRUARY 8, 2012
8:15 A.M.
Room 312

HOUSE BILL NO. 2834
RELATING TO THE HAWAII ECONOMIC DEVELOPMENT TASK FORCE

Chairpersons Coffman and Tsuji and Members of the Committees:

Thank you for the opportunity to provide testimony on House Bill No. 2834. This bill proposes to extend the sunset date for the Hawaii economic development task force to June 30, 2014.

The Department supports this bill. Act 73 of Session Laws of 2010 established the Hawaii Economic Development Task Force within the Department of Business, Economic Development, and Tourism with one of its goals being to "develop and maintain a broad approach to ensure that Hawaii's energy and food policy and program development is integrated within the overall economic, social, environmental, and cultural aspects of society". As part of their mandate, the task force submitted a final report to the Legislature highlighting their recommendations to achieve energy and food self-sufficiency.

This bill is a result of one of the recommendations from the task force. In line with that recommendation, the Department would suggest an amendment to rename the task force, the "Hawai'i Food and Energy Security Council" and expand their mandate to include climate change adaptation strategies and watershed restoration.

The Department would like to thank the members of the Hawaii Economic Development Task Force for their hard work and dedication in facilitating this discussion and coming forward with their recommendations. Finally, as the task force was within the Department of Business, Economic Development, and Tourism, the Department of Agriculture would like to defer to them.

Thank you for the opportunity to submit testimony.

HB 2262

RELATING TO ENERGY

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

February 8, 2012

Chairs Coffman and Tsuji and Members of the House Committees on Energy & Environmental Protection and Agriculture:

I am Joel Matsunaga, testifying on behalf of Hawaii BioEnergy in support of HB 2262, "Relating to Energy."

SUMMARY

Hawaii BioEnergy, LLC ("HBE") supports HB 2262, which amends the ethanol facility income tax credit to apply to several types of renewable fuel and establishes a tax credit for the growing of feedstock to be used in renewable fuel production. The proposed measure would help to reduce upstream and downstream production costs and improve the competitiveness of agriculturally-based enterprises in Hawaii. While HBE supports HB 2262, 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 to attract additional investment to the nascent biofuels sector. HBE respectfully submits that HB 2262 should be amended to:

1) Require facilities utilize at least 75% local feedstock in order claim the full amount of the credit; such an amendment would help to attract greater upstream investment into the agricultural and nascent biomass sectors and help to secure the off-take market for local producers; and,

2) Require that the facility operate at a minimum of 75% capacity in order to claim the full amount of the production credit so as to not inadvertently incent inefficient production.

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. HBE and its partners would like to use significant portions of our land to address Hawaii's existing and growing energy needs.

Understanding the urgency of these needs and anticipating growing demand, HBE has dedicated the last several years to feedstock trials, extensive technology evaluation and detail financial modeling of various production pathways in an effort to ensure HBE's ultimate production is as productive, efficient and sustainable as possible. HBE's own research, development and demonstration (RD&D) efforts have been accelerated by funding from the US government's Defense Advanced Research Projects Agency (DARPA), Office of Naval Research, as well as a Congressional Appropriation administered through the Air Force Research Laboratory. Collectively, this analysis has enabled HBE to clearly understand the production potential and challenges associated with Hawaii's unique natural resource base, geography, climate, market and infrastructure.

While Hawaii holds tremendous potential to produce a range of advanced, high-density biofuels from locally produced feedstocks and innovative next generation technologies, the industry is still in its infancy and faces a myriad of cost and development challenges. Many of these challenges are attributed to the fact that Hawaii's agricultural and otherwise productive lands are relatively small, non-contiguous parcels with varying microclimates and other conditions which limit scale and increase operational costs. Such limitations and cost impacts are particularly pronounced in Hawaii where the cost of doing business is already disproportionately high relative to the mainland. Providing a renewable fuel feedstock tax credit would help to offset a portion of the upfront costs associated biomass production, help to put underutilized or marginalized land into value-added production, and help to revitalize the agricultural sector. Modifying HB 2262 and HRS §235-110.3 to incorporate a 75% local feedstock provision would help to expand investment in and development of dedicated renewable energy feedstocks while helping to secure the off-take market for producers of these new products

HBE also supports the intent of HB 2262 to expand the Ethanol Facility Credit HRS §235-110.3 to apply to other renewable fuels; such an expansion would help to diversify the slate of biofuels produced on the islands for both transport and power generation. However, HBE proposes that the bill increase the annual operating threshold for each eligible facility to 75% in order to be eligible to claim the full credit. Increasing the threshold from the currently proposed 50% level would help to maximize biofuel output and mitigate the risk of perverse incentives to operate below efficiency.

HB 2262 and other, related measures before this legislature which provide both upstream and downstream support bioenergy producers are key to attracting investment, minimizing risk, and jumpstarting production. Providing a Renewable Energy Feedstock Credit and Expanding the Ethanol Facility Credit would help to attract a wider range of investors and help offset the technology and capital risks inherent in the establishment of a new industry. These credits are of particular importance to companies such as HBE that intend to utilize advanced, next generation feedstocks and conversion technologies which are more efficient and have the potential to produce high density, drop-in fuels, but carry substantially higher capital costs than first generation biofuels. HBE recognizes that the state is currently facing budget constraints that may limit its ability to increase total funding for the credit at this time; however, HBE does hope that this body will consider raising the total credit amount and tailoring future bills to explicitly support more efficient, second generation technologies. Providing a higher level of incentive for high tech, second generation projects would help to offset higher capital costs, facilitate financing, and enable the production of higher density drop-in fuels that are capable of displacing a greater percentage of imported oil. Second generation projects would help establish Hawaii as a hub of bioenergy innovation, with the corresponding investment generating greater economic impacts and tax revenue for the state.

CONCLUDING REMARKS

HBE is moving forward with advanced, bio-based energy projects from locally grown feedstocks that will help provide a local, renewable source of energy for Hawaii. HBE believes that HB 2262 will help to accelerate and expand Hawaii's bio-based renewable energy economy and help to reinvigorate the state's agricultural sector more broadly. Based on the aforementioned, Hawaii BioEnergy respectfully requests your support for HB 2262 with the proposed amendments.

Thank you for the opportunity to testify.

L E G I S L A T I V E

TAXBILLSERVICE

126 Queen Street, Suite 304 TAX FOUNDATION OF HAWAII Honolulu, Hawaii 96813 Tel. 536-4587

SUBJECT: INCOME, Renewable fuel feedstock and facility tax credits

BILL NUMBER: HB 2262

INTRODUCED BY: Coffman and Chong

BRIEF SUMMARY: Adds a new section to HRS chapter 235 to allow taxpayers to claim a renewable fuel feedstock tax credit if the taxpayer: (1) provides feedstock grown in the state to a certified renewable fuels production facility for the production of renewable fuels; and (2) is domiciled or based in the state. The amount of the tax credit shall be equal to: (1) 10% of the taxpayer's operational expenditures for the first taxable year that the credit is claimed; and (2) 5% of the taxpayer's operational expenditures for the second taxable year that the credit is claimed provided that the credit claimed shall not exceed $150,000 per taxable year and that the aggregate amount of tax credits claimed under this section for all taxpayers shall not exceed $1.5 million per year.

If delivery of the feedstock for which a credit under this section is claimed has not occurred by the last day of the twelfth month following the second taxable year that the credit is claimed, the credit claimed under this section shall be recaptured equal to 50% of the total tax credit claimed under this section in the preceding two taxable years and shall be added to the taxpayer's tax liability for the taxable year in which the recapture occurs.

Requires the director of taxation to prepare the necessary forms to claim the credit, may require the taxpayer to furnish reasonable information to ascertain the validity of the claim for credit, and may adopt rules necessary to effectuate the purposes of this section pursuant to HRS chapter 91.

If the tax credit exceeds the taxpayer's income tax liability, any excess credit shall be refunded to the taxpayer provided such amount is in excess of $1. Requires all claims for the credit, including amended claims, to be 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 this subsection shall constitute a waiver of the right to claim the credit.

Amends HRS section 235-110.3 (d) to change the name of the ethanol facility tax credit to the renewable fuels facility tax credit including changing any reference to ethanol with renewable fuels. Stipulates that in order to claim the credit, the taxpayer must be domiciled or based in the state and the credit shall not be claimed for more than five years.

The annual dollar amount of the credit shall be thirty cents per gallon produced for motor vehicles, ships, aviation, and electrical generation provided that the nameplate capacity of the renewable fuels production facility is at least one million gallons. Limits the amount of tax credit that may be claimed by a taxpayer to $1.5 million per taxable year.

Stipulates that: (1) the claim for this credit shall not exceed one hundred percent of the total of all investments made by the taxpayer during the credit period; (2) the qualifying renewable fuels production facility operated at a level of production of at least 50% of its nameplate capacity on an annualized basis; (3) at least 50% of the feedstock used in the production of renewable fuels by the qualifying renewable fuels production facility is sourced in the state; and (4) a taxpayer that claims the credit under this section shall not claim any other tax credit under this chapter for the same taxable year.

If the qualifying renewable fuels production facility does not meet the 50% feedstock requirement, the taxpayer may claim a tax credit in an amount equal to 40% of the amount that would otherwise be available provided that at least 10% of the feedstock used by the qualifying renewable fuels production facility is sourced in the state.

Defines "qualifying renewable fuel production" to mean production of: (1) methanol, ethanol, or other alcohols; (2) blends of gasoline with 85% or more of alcohol; (3) propane; (4) hydrogen; (5) biodiesel or renewable diesel; (6) biofuels derived from biological materials, including algae; or (7) renewable jet fuel, renewable gasoline, or liquid or gaseous fuels provided that the renewable fuel shall be sold in the state for ground transportation, sea transportation; aviation or electrical generation.

Limits the annual amount of certified credits that may be claimed in a year to $10,500,000.

EFFECTIVE DATE: Tax years beginning after December 31, 2012

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 renewable fuels facility tax credit. The measure also proposes an income tax credit to encourage the production of feedstock in the state that shall be used in the renewable fuels facility.

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 look for other types of alternate energy to encourage through the appropriation of a specific number 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 the tax credit as it would provide some accountability for the taxpayers' funds being utilized to support this effort.

Finally, 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 and 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. Thus, such proposals 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 2/7/12

h2technologies

Testimony
Presented Before the
House Committee on Energy & Environmental Protection
The Honorable Denny Coffman, Chair
The Honorable Derek S. K. Kawakami, Vice Chair, and Members

DATE: Tuesday, February 08, 2012
TIME: 8:15 a.m.
PLACE: Conference Room 312
State Capitol
415 South Beretania Street

Presented by: Guy Toyama, President & CEO of H2 Technologies, Inc.

IN SUPPORT OF HB2262 (with revision)

I am Guy Toyama, President and CEO of H2 Technologies, Inc. A Hawaii Headquartered corporation developing hydrogen production and infrastructure for renewable transportation fuels, grid stability and energy storage.

The State of Hawaii's Renewable Hydrogen Program [Section196-10, HRS] calls for the development of a hydrogen economy in Hawaii and specifically calls for a hydrogen infrastructure, including hydrogen production, storage and dispensing capabilities. Currently there are several hydrogen infrastructure projects underway in Hawaii -- hydrogen fueling stations at three military bases on Oahu, and on the island of Hawaii, a fueling station at Hawaii Volcanoes National Park, a geothermal-to-hydrogen project, and a fuel cell electric bus to be operated by the County of Hawaii Mass transportation Agency. General Motors has identified Hawaii for the rollout of its hydrogen fuel cell electric vehicles and is working with Hawaii partners as part of the Hawaii Hydrogen Initiative (H2I) to introduce at least 25 hydrogen fueling stations on Oahu over the next 10 years.

This bill allows for an expansion of the ethanol facilities investment tax credit to allow both biofuels and fuels made from renewable energy resources to be competitive with the subsidized costs of fossil fuels. **This bill supports HRS 196-10 by helping to create the incentives to advance renewable hydrogen production in the State of Hawaii.**

<u>However, the spirit and intent of this bill is to foster the growth of a local feedstock industry and the low requirement of a 10% local feedstock defeats this purpose</u>. In my humble opinion, the feedstock should be sourced from a local resource as a "majority" or at least 51%.

For the foregoing reasons, H2 Technologies supports passage of HB2262, with a request to the committee that the feedstock requirement be a local majority or at least 51%. Thank you for the opportunity to testify.

Mahalo,

Guy Toyama
President & CEO
H2 Technologies, Inc.
73-4460 Queen Kaahumanu Hwy #131
Kailua-Kona, HI 96740

Written Testimony before the House of Representatives Committees on Energy and Environmental Protection and Agriculture

H.B. 2262 – Relating to Energy

Wednesday, February 8, 2012
8:15 AM, Conference Room 312

By Cecily Barnes
Manager, Biofuels
Hawaiian Electric Company, Inc.

Chairs Coffman and Tsuji, Vice-Chairs Kawakami and Hashem, and Members of the Committees:

My name is Cecily Barnes. I am the Manager of Biofuels for Hawaiian Electric Company. I submit this testimony on behalf of Hawaiian Electric Company and its subsidiary utilities, Maui Electric Company and Hawaii Electric Light Company, hereby referred to collectively as the Hawaiian Electric Companies.

The Hawaiian Electric Companies support H.B. 2262, which amends the statutes to broaden the original intent from ethanol incentives to renewable fuels and feedstocks to be used in renewable fuel production for bioenergy development in Hawaii.

The Hawaiian Electric Companies are committed to exploring and using biofuels in its existing and planned generating units. The use of biofuels can reduce the State's dependence on imported oil and increase the amount of renewable energy from sustainable resources. This commitment by the Hawaiian Electric Companies is demonstrated by the following initiatives:

- Installed a nominal 120 MW power plant in 2009 at Campbell Industrial Park that has operating on 100% biodiesel since November, 2010;
- Successfully tested biofuels at Maui Electric Company's Ma'alaea Power Plant and Hawaiian Electric's Kahe Power Plant.
    - Maui Electric conducted a 1 million gallon biodiesel demonstration project from April through August 2011 at Ma'alaea Power Plant. Results indicate

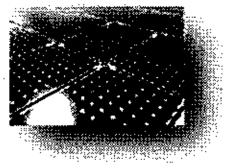
that conversion of Maui Electric's Mitsubishi class diesel generators from petro-diesel to 100% biodiesel is feasible from operational, maintenance, and air permitting standpoints.

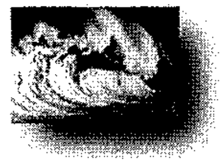
  - Hawaiian Electric successfully co-fired 1.5 million gallons of crude palm oil at Unit 3 of the Kahe Generating Station. This test demonstrated that co-firing biofuel with low sulfur fuel oil at various blends up to 100% biofuel was possible and resulted in lower emissions for Nitrous Oxides (NOx), Sulfur Oxides (SOx), and other pollutants.

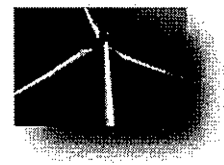
- Provided 5 years of seed funding to the Hawaii Agriculture Research Center ("HARC") and the agriculture departments at the University of Hawaii's Manoa and Hilo campuses to conduct biofuel crop research with a 6th year of funding to follow this year; and
- Awarded a 20-year contract to Hawaii BioEnergy to purchase 10 million gallons of biofuel annually, stimulating development of local feedstock and biofuel processing on the Island of Kauai. This contract was filed with the Public Utilities Commission (PUC) on November 30, 2011 and is pending approval.
- Awarded a 3-year contract to Pacific Biodiesel to purchase 250,000 gallons of biodiesel annually on the Island of Oahu, stimulating development of local feedstock and biofuel processing in Hawaii. This contract was filed with the PUC on November 30, 2011 and is pending approval.
- Awarded a pilot contract to Phycal to purchase 100,000 to 150,000 gallons of algal oil for a one-time supply to be delivered in 2014, stimulating development of local feedstock and biofuel processing on the Island of Oahu. Phycal intends to develop larger volumes of algal oil upon successful testing of the pilot.
- Awarded a 20-year contract to Aina Koa Pona to purchase 16 million gallons of biofuel annually, stimulating development of local feedstock and biofuel processing on the Island of Hawaii. This contract was filed with the PUC on January 6, 2011 and denied on September 29, 2011. Hawaiian Electric continues discussions with Aina Koa Pono with the intent of negotiating a new contract.

In conclusion, the Hawaiian Electric Companies support H.B. 2262 as a way to stimulate biofuel development In Hawaii. Thank you for the opportunity to present this testimony.

blue planet FOUNDATION







HOUSE COMMITTEE ON ENERGY & ENVIRONMENTAL PROTECTION
HOUSE COMMITTEE ON AGRICULTURE
February 8, 2012, 8:15 A.M.
Room 312
(Testimony is 1 page long)

TESTIMONY IN SUPPORT OF HB 2262, SUGGESTED AMENDMENT

Chairs Coffman and Tsuji and members of the Committees:

The Blue Planet Foundation supports HB 2262, a measure that expands the ethanol facility tax credit to include other liquid biofuels and makes other amendments to the credit. This policy will provide greater support for Hawaii's diverse biofuel production infrastructure.

Biofuels will likely play a major role in Hawaii's clean energy future—particularly as a substitute for petroleum-based transportation fuels. Transportation fuels in Hawai`i can be made from renewable resources, such as biomass in various forms, algae, and waste products. These materials are neither as scarce nor as expensive as crude oil. Even more importantly, these materials are available here. Hawai'i should set a clear course for a steady, incremental transition to renewable fuels including local and sustainable biofuels.

SUGGESTED AMENDMENT

Blue Planet respectfully requests that HB 2262 be amended so the credit applies to biofuel facilities utilizing Hawaii-grown and produced feedstocks only. The measure currently allows up to 50% of the feedstock to be sourced outside of the state (and even a greater amount if a smaller credit is taken).

This policy should encourage Hawaii's clean, local, renewable energy industries. We want to avoid a distorted outcome where oil crops are being shipped across the Pacific (from potentially destructive sources, like former rainforest land) for use in Hawai'i. Please ensure that this policy does not simply replace one import (oil) with another one (imported oil crops).

Thank you for the opportunity to testify.

Jeff Mikulina, executive director • jeff@blueplanetfoundation.org
55 Merchant Street 17th Floor • Honolulu, Hawai'I 96813 • 808-954-6142 • blueplanetfoundation.org

kawakami1 - Marissa

From: mailinglist@capitol.hawaii.gov
Sent: Tuesday, February 07, 2012 2:42 PM
To: EEPtestimony
Cc: wmaloney@aol.com
Subject: Testimony for HB2262 on 2/8/2012 8:15:00 AM

Testimony for EEP/AGR 2/8/2012 8:15:00 AM HB2262

Conference room: 312
Testifier position: Support
Testifier will be present: No
Submitted by: William Maloney
Organization: Pacific West Energy LLC
E-mail: wmaloney@aol.com
Submitted on: 2/7/2012

Comments:

kawakami1 - Marissa

From: mailinglist@capitol.hawaii.gov
Sent: Saturday, February 04, 2012 9:22 PM
To: EEPtestimony
Cc: ed.j.wagner@gmail.com
Subject: Testimony for HB2262 on 2/8/2012 8:15:00 AM

Testimony for EEP/AGR 2/8/2012 8:15:00 AM HB2262

Conference room: 312
Testifier position: Comments Only
Testifier will be present: No
Submitted by: Ed Wagner
Organization: Individual
E-mail: ed.j.wagner@gmail.com
Submitted on: 2/4/2012

Comments:
Dear Representative Coffman and members of the EEP and AGR committees:

The intent of this bill is to establish a tax credit for the growing of feedstock to be used in renewable fuel production, but the language of the bill seems to contain loopholes that should be closed.

I recommend that HB2262 be amended in the following way:

1) The phrase "renewable fuels production facility" throughout the bill should be changed to "renewable [transportation] fuels production facility.

2) The phrase "electrical generation" should be stricken from the bill.

No feedstock should be grown in Hawaii for electricity production as was attempted last year by the failed HECO - Aina Koa Pono (AKP) biofuel proposal to the PUC.

I hope this bill is not an attempt by HECO and AKP to circumvent that failed proposal to allow AKP to resurrect its plan to build a biofuel facility in Ka'u or elsewhere, and to sell bio-oil to HECO/MECO/HELCO to generate electricity.

Any and all renewable fuels produced from growing feedstock in Hawaii should be used ONLY for transportation fuel.

Giving tax credits for someone selling feedstock to a "renewable fuels production facility" whose goal is to sell the fuel to HECO/MECO/HELCO should be disallowed because it would encourage our utility to continue stifling geothermal, wind, solar, and ocean technologies to maintain its profits from dirty power generation facilities for another 20 years.

A better use of our land would be to produce food to help Hawaii become a self-sufficient, sustainable state that is much less dependent on food imports from other states and other countries.

Sincerely,

Ed Wagner
Mililani, HI

kawakami1 - Marissa

From: mailinglist@capitol.hawaii.gov
Sent: Monday, February 06, 2012 7:06 PM
To: EEPtestimony
Cc: ulrichbonne@msn.com
Subject: Testimony for HB2262 on 2/8/2012 8:15:00 AM

Testimony for EEP/AGR 2/8/2012 8:15:00 AM HB2262

Conference room: 312
Testifier position: Comments Only
Testifier will be present: No
Submitted by: Ulrich Bonne
Organization: Individual
E-mail: ulrichbonne@msn.com
Submitted on: 2/6/2012

Comments: