DEPARTMENT OF BUSINESS, ECONOMIC DEVELOPMENT & TOURISM

NEIL ABERCROMBIE
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Statement of
RICHARD C. LIM
Director
Department of Business, Economic Development, and Tourism
before the
SENATE COMMITTEE ON WAYS AND MEANS
Tuesday, February 28, 2012
9:00 AM
State Capitol, Conference Room 211
in consideration of
SB2666 SD1
RELATING TO ENERGY.

Chair Ige, Vice Chair Kidani, and Members of the Committee.

The Department of Business, Economic Development, and Tourism (DBEDT) supports the intent of SB2666 SD1, but has concerns about DBEDT's proposed role in administering another tax credit program and the lack of resources under this measure to administer the proposed biofuel facility development and construction cost tax credit program.

We note that several planned biofuels projects identified in the 2011 Biofuels Study Interim Report (Act 203, Final Report due December 2012) could be eligible for the tax credit proposed by SB2666 SD1, although one is currently under construction without the benefit of a state production facility tax credit.

As this is a tax issue, DBEDT defers to the appropriate agency for comment, and asks the Legislature to exercise caution in the creation of an unfunded mandate and to carefully consider whether DBEDT is the most appropriate agency to administer this tax credit program.

Thank you for the opportunity to offer these comments.

REVISED

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Statement of
MARK B. GLICK
Administrator, Hawaii State Energy Office
Department of Business, Economic Development, and Tourism
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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, Biofuel production facility tax credit

BILL NUMBER: SB 2666, SD-1

INTRODUCED BY: Senate Committees on Energy and Environment and Economic Development and Technology

BRIEF SUMMARY: Adds a new section to HRS chapter 235 to allow a taxpayer to claim a non-refundable biofuel production facility income tax credit of 15% of the qualified development and construction costs of the facility. To qualify for the credit a facility shall: (1) be located in the state; (2) meet the definition of a qualified biofuel production facility; (3) have a production capacity of at least 5 million gallons; (4) have qualified development and construction costs totaling at least $10 million; and (5) be in production on or before January 1, 2017. The total credits claimed per qualified biofuel facility shall not exceed $60 million.

Requires the taxpayer to first prequalify for the credit by registering with the department of business, economic development, and tourism (DBEDT) during the development or construction stage. Failure to comply with this provision may constitute a waiver of the right to claim the credit. Requires every taxpayer claiming the credit to submit a written, sworn statement to DBEDT no later than 90 days following the end of a tax year.

Every taxpayer claiming the credit must submit a written statement to DBEDT within 90 days of the close of the tax year of the qualified costs, amount of tax credits claimed and the number of hires related to the development or construction of the facility in a taxable year. Requires DBEDT to maintain records of the taxpayers claiming the credit, obtain and total the aggregate amounts of the construction costs for each facility and provide a letter to the director of taxation delineating the amount of tax credits for each facility and the cumulative amount claimed for all years.

In the case of a partnership, S corporation, estate, or trust, the tax credit allowable shall be for qualified production costs incurred by the entity with the cost upon which the tax credit is computed shall be at the entity level. Distribution and share of the tax credit shall be determined by rule adopted by the director of taxation. If a deduction is taken under section 179 (with respect to election to expense depreciable business assets) of the Internal Revenue Code, no tax credit shall be allowed for those costs for which the deduction is taken. The basis for eligible property for depreciation of accelerated cost recovery system purposes for state income taxes shall be reduced by the amount of credit allowable and claimed.

Credits in excess of tax liability may be applied to subsequent tax liability until exhausted. Requires all claims for the credit to be filed before the end of the twelfth month following the end of tax year. The director of taxation shall prepare forms as may be necessary to claim the credit and may adopt rules pursuant to chapter 91. A recipient of the tax credits shall refund the state the entire amount of the credits earned and claimed in one payment in the tenth taxable year after the recipient obtains its final tax credit.

Defines "net income tax liability," "qualified biofuel production facility" and "qualified development and construction cost" for purposes of the measure.

The tax credit shall: (1) apply to qualified development and construction costs of qualified biofuel production facilities incurred on or after 7/1/11, and before 1/1/17; and (2) be repealed on 1/1/29.

EFFECTIVE DATE: July 1, 2050; applicable to tax year beginning after December 31, 2011

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 a similar credit for the production of biofuels.

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 that 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 the existing ethanol facility tax 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 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. 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, the measure provides that the recipient of the tax credits shall refund the entire amount of the tax credits claimed ten years after the year the recipient received the final tax credit payment. The addition of this provision in this draft of the measure turns the tax credit into a no-interest loan. The taxpayer may be unable to repay this "loan" and there are no provisions in this bill this scenario.

Digested 2/24/12