



Pacific Biodiesel, Inc.
40 Hobron Avenue
Kahului, Hawaii 96732
Phone (808) 877-3144
Fax (808) 877-5030
www.biodiesel.com

Friday, April 1, 2011
5:00 pm Conference Room 308

LATE TESTIMONY

House Finance Committee
Rep. Marcus R. Oshiro, Chair
Rep. Marilyn B. Lee, Vice Chair

Supporting SB ~~146~~⁷⁷², with amendments by HREA and DBEDT

Testimony of Pacific Biodiesel, Inc., a Hawai'i-based renewable fuel company since 1996

Pacific Biodiesel supports the position of the Hawai'i Renewable Energy Association (HREA) which supports passage of SB 772 HD2 as they have submitted with input from DBEDT. We believe HD2 is a much better vehicle for encouraging immediate growth in the state biofuels industry.

HREA's proposed HD2 proposes a more practical version that focuses on currently accepted biofuels and encompasses a broader spectrum of feedstocks. It also allows the credit to be applied a to production that could be increased this year.

Pacific Biodiesel owns and operates two biodiesel plants in Hawai'i, employs over 30 residents in this state and is currently developing a new, state-of-the-art, zero waste biodiesel facility on the Big Island. This credit will allow us to reach full capacity for the Big Island biodiesel plant quicker, and will also help our company to begin develop plans for our next advanced Hawai'i biodiesel refinery, which will likely be located on Oahu, bringing more jobs and local energy revenue to the State.

Sincerely,

Ms. Kelly King
Vice President
Pacific Biodiesel, Inc.
ktk@biodiesel.com
(808) 877-3144

HAWAII RENEWABLE ENERGY ALLIANCE

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

THE SENATE
TWENTY-SIXTH LEGISLATURE, 2011
STATE OF HAWAII

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

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.

HAWAII RENEWABLE ENERGY ALLIANCE

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

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:

HAWAII RENEWABLE ENERGY ALLIANCE

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

"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

HAWAII RENEWABLE ENERGY ALLIANCE

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

director of business, economic development and tourism to be a commercially available liquid fuel capable of displacing 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

HAWAII RENEWABLE ENERGY ALLIANCE

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

(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.

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

HAWAII RENEWABLE ENERGY ALLIANCE

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

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 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.

HAWAII RENEWABLE ENERGY ALLIANCE

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

~~[(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, 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.

~~[(l)]~~ (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)]~~ (l) 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

HAWAII RENEWABLE ENERGY ALLIANCE

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

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.

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 per cent 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.