



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

NEIL ABERCROMBIE
GOVERNOR

RICHARD C. LIM
DIRECTOR

MARY ALICE EVANS
DEPUTY DIRECTOR

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Statement of
Richard C. Lim
Director
Department of Business, Economic Development, and Tourism
before the
**House Committees on Energy and Environmental Protection
and Economic Development and Business**

Thursday, February 14, 2013
8:30 AM

State Capitol, Conference Room 325

in consideration of

HB 1410 RELATING TO ENERGY.

Chairs Lee and Tsuji, Vice Chairs Thielen and Ward, and Members of the Committees.

The Department of Business, Economic Development, and Tourism (DBEDT) offers comments on HB 1410, which would change the ethanol facility tax credit to a production credit available to all biofuels, including ethanol. It would also replace the \$12 million annual cap with an amount to be determined, and would give DBEDT discretion to increase the cap “according to the level of demand.”

We defer to the State Department of Taxation on tax issues and implementation.

We are concerned that significant cost and effort would be needed to develop processes within State agencies, including DBEDT, to administer this program. We also question the effectiveness of this credit in influencing investment in biofuel facilities.

Furthermore, we note that the definition of “qualifying biofuel production” (which specifies “produced within the State” on page 8, line 21) appears to be in conflict with the commerce clause of the U.S. Constitution.

Thank you for the opportunity to offer these comments.

**Written Testimony before the
House Committees on
Energy and Environmental Protection
Economic Development and Business**

H.B. 1410

Thursday, February 14, 2013

8:30 AM, Conference Room 325

**By Cecily Barnes
Manager, Fuels
Hawaiian Electric Company, Inc.**

Chairs Lee and Tsuji, Vice-Chairs Thielen and Ward, and Members of the Committees:

My name is Cecily Barnes. I am the Manager of the Fuels Department 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 Hawaiian Electric.

Hawaiian Electric supports H.B. 1410 amending the statutes to broaden the original intent from ethanol incentives to biofuel incentives for biofuel development in Hawaii. We respectfully offer an amendment under Hawaii Revised Statutes (“HRS”) § 235-110.3--biofuel production facility tax credit--to broaden the statutes another step to include “renewable feedstock, or waste materials, including fats, oils, greases, algae and municipal solid waste” to meet the definition of “Agricultural feedstock” as proposed in H.B. 1410:

- On page 6 lines 9-12 (changes in **bold**)

"Agricultural feedstock" includes but is not limited to sugar cane; byproducts from sugar cane; sweet sorghum; sugar beets; biomass; renewable oils; fiber; algae; woody biomass; and other biological materials. **The term shall include used cooking oils, renewable feedstock, or waste materials, including fats, oils, greases, algae and municipal solid waste.**

In addition, we respectfully offer another amendment under HRS § 235-110.3-biofuel production facility tax credit- to revise the definition of “Qualifying biofuel production” as proposed in H.B. 1410:

- On page 8 lines 15-22 (changes in **bold**)

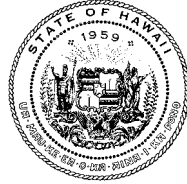
"Qualifying biofuel production" means biofuel produced from renewable feedstocks produced within the State; provided that the renewable ~~transportation~~ **transportation** fuel shall be sold in the State.

Hawaiian Electric is 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. We therefore support H.B. 1410 as a way to stimulate biofuel development In Hawaii.

Thank you for the opportunity to present this testimony.

NEIL ABERCROMBIE
GOVERNOR

SHAN TSUTSUI
LT. GOVERNOR



STATE OF HAWAII
DEPARTMENT OF TAXATION
P.O. BOX 259
HONOLULU, HAWAII 96809
PHONE NO: (808) 587-1540
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FREDERICK D. PABLO
DIRECTOR OF TAXATION

JOSHUA WISCH
DEPUTY DIRECTOR

To: The Honorable Chris Lee, Chair,
and Members of the House Committee on Energy and Environmental Protection

The Honorable Clift Tsuji, Chair
and Members of the House Committee on Economic Development and Business

Date: Thursday, February 14, 2013
Time: 8:30 A.M.
Place: Conference Room 325, State Capitol

From: Frederick D. Pablo, Director
Department of Taxation

Re: H.B. 1410, Relating to Energy

The Department of Taxation (Department) appreciates the intent of H.B. 1410, and provides the following information and comments for your consideration.

H.B. 1410 amends the tax credit in Section 235-110.3, Hawaii Revised Statutes, such that it applies to a biofuel production facility rather than an ethanol facility. It also changes the credit such that it is applied per amount of fuel produced rather than nameplate capacity of the facility.

The Department notes that the definition of "qualifying biofuel production" on page 8 of the bill would require that biofuel be produced from renewable feedstocks produced within the State. This Department defers to the Department of the Attorney General for an analysis of the constitutionality of this provision, but notes that the holding in Bacchus Imports Ltd. v. Dias, 468 U.S. 263 (1984) indicates that provisions that result in taxation that is discriminatory against products imported from outside the State would likely violate the Commerce Clause of the United States Constitution. The Department suggests amending this provision such that the feedstocks used are not required to be produced in the State.

The Department additionally notes that the credit is to be administered based on British Thermal Units of fuel produced by a facility. The different fuels may have differing heat capacities, and use of the British Thermal Unit as a unit of measure may make this bill difficult to administer without further clarification. The Department suggests that the bill make reference to standard values for different types of fuel or to an established source of such information, in order to make potential audit of taxpayers claiming the credit easier to perform.

The Department additionally notes that this credit has an aggregate cap of as yet indeterminate value. Aggregate caps are difficult to administer and result in uncertainty for

taxpayers, and the Department suggests that the provision establishing the aggregate cap be removed.

Thank you for the opportunity to provide comments.

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 730; HB 1410 (Identical)

INTRODUCED BY: SB by Dela Cruz and 2 Democrats; HB by C. Lee

BRIEF SUMMARY: Amends HRS section 235-110.3 to change the name of the ethanol facility tax credit to the biofuel production facility tax credit including changing any references to ethanol to biofuel.

The annual dollar amount of the tax credit during the eight-year period shall be equal to 30 cents per one hundred fifteen-thousand British thermal units (BTU) of biofuels; provided that the biofuel production facility's capacity is not less than five hundred seventy-five billion BTUs of biofuel per year; provided further that the amount of the tax credit claimed by a taxpayer shall not exceed \$3,000,000 per taxable year. Also requires the qualifying biofuel production facility to be located in the state and, if available, use agricultural feedstock for at least 75% of its production output.

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

Defines "biofuel" as ethanol; pyrolysis oil; renewable diesel; bio-gasoline; bio-jet fuel; or any other liquid fuel that meets the relevant biofuel specifications of ASTM International and is produced from agricultural feedstock. Adds a definition of "agricultural feedstock" as sugar cane; byproducts from sugar cane; sweet sorghum; sugar beets; biomass; renewable oils; fiber; algae; woody biomass; and other biological materials. Clarifies the definition of "investment" to include "direct capital expenditures."

Increases the annual amount of certified credits from \$12 million to \$ ____ million in the aggregate. Allows the department of business, economic development, and tourism (DBEDT) to increase the cap according to the level of demand for qualified biofuel production provided that DBEDT report to the legislature the rationale and justification for any such increase in its next annual report to the legislature. Repeals the limitation that the income tax credit be limited to 40 million gallons per year.

EFFECTIVE DATE: Tax years beginning after December 31, 2014

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 biofuel production facility tax credit, increase the amount of credits from \$12 million to \$ ____ million and repeal the 40 million gallon annual limit in order to claim the credit.

While it has been almost ten years since the credit for the construction of an ethanol plant in Hawaii was enacted and ground has yet to be broken, 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.

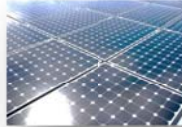
While the idea of providing a tax credit to encourage such activities may have been acceptable a few years ago when the economy was on a roll and advocates could point to credits like those to encourage construction and renovation activities, what lawmakers and administrators have learned in these past 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.

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.

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, and more recently incentives for photovoltaic "systems." 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 2/2/13



**HOUSE COMMITTEE ON ENERGY & ENVIRONMENTAL PROTECTION
HOUSE COMMITTEE ON ECONOMIC DEVELOPMENT & BUSINESS**

February 14, 2013, 8:30 A.M.

Room 325

(Testimony is 2 pages long)

TESTIMONY IN SUPPORT OF HB 1410, SUGGESTED AMENDMENTS

Chairs Lee and Tsuji and members of the committees:

The Blue Planet Foundation supports HB 1410, expanding the eligibility for biofuel production facilities beyond ethanol. This policy—providing a biofuel facility tax credit to incentivize the needed development and construction of such facilities—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 AMENDMENTS

Blue Planet respectfully requests that HB 1410 be amended to address the following issues:

1. We appreciate that this measure requires that agricultural feedstock comprise a majority (75%) of the production output, but it is unclear if the feedstock needs to be sourced locally. This measure should be amended to clarify that the agricultural feedstock for a qualifying facility be produced in Hawaii.
2. Blue Planet supports expanding this credit to new as well as existing biofuel facilities. Supporting existing biodiesel production ensures success and supports existing local

jobs, revenue and energy security, and allows for more rapid expansion, including diversified agricultural development.

3. A minor point, but Section 1 of the measure fails to mention “biodiesel” in the list of “potential fuels that could be produced in Hawaii,” yet it is currently the only biofuel being produced at scale.

Thank you for the opportunity to testify.



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February 13, 2013

TESTIMONY ON HB 1410, RELATING TO ENERGY
SUPPORT WITH AMENDMENTS

TO: Rep. Chris Lee, Chair, Committee on Energy and Environmental Protection
Rep. Cynthia Thielen, Vice Chair, Comm. on Energy and Environmental Protection
Rep. Cliff Tsuji, Chair, Committee on Economic Dev. & Business
Rep. Gene Ward, Vice Chair, Committee on Economic Dev. & Business

Hearing February 14, 2013 at 8:30 am, Conference Room 325

From: Robert A. King
Pacific Biodiesel Technologies, LLC

Aloha Chairs, Vice Chairs, and Distinguished Members:

My name is Robert and I am Chairman of the Board of Managers at Pacific Biodiesel Technologies (PBT), a fast-growing, Hawai'i-based biofuel technology and production company that has been supplying the State with renewable fuel since 1996. The growth of our company has always been a struggle, but I am proud to say that today I represent the management and staff of over 50 taxpaying residents, as well as the interests of over 35 individual Hawai'i-based investors in PBT and Big Island Biodiesel. We are all here in spirit today to ask you to help us help our State in reaching its clean energy goals. Mahalo nui loa for agreeing to hear House Bill 1410 as it is our great hope that this proposal will be a catalyst for significant expansion of the biofuel industry in Hawai'i as well as the diversified agriculture that will add jobs, keep open space and help develop the food and fuel security that so many of our state officials and community leaders have promised to support.

With that in mind, I testify in support of HB1410, but with the necessary changes to truly encourage real growth in the Hawaii biofuels industry.

While PBT supports the intent of HB1410, many of the details and mechanics articulated within are flawed. With the proposed changes, this bill can truly serve the best interests of Hawai'i's residents, potential new biofuel projects, and most importantly the "boots-on-the-ground" Hawai'i-based investors and employees who are already advancing proven biofuel technology and fuel products.

renewable • sustainable • community-based

PBT basically supports the amendments proposed by the Hawaii Renewable Energy Alliance (HREA), but would like to specify the major concerns that we implore your two committees to address:

1. The Preamble fails to include Biodiesel which is the only proven biofuel currently in commercial production in our state—production supported by local investors, local employees and local consumers.
2. Production per acre/yield figures mentioned in the bill are not based on existing data or on direct "*hand-in-the-soil*" experience.
3. The effective dates of the bill afford an unfair advantage to new biofuel interests, the majority of which are likely to come from the Mainland; and in so doing, it encourages the promotion of unproven new technologies that will likely result in more facilities but not necessarily more fuel production which, of course, is the end game we should not and cannot lose sight of. Too often over the past two decades we have witnessed pie-in-the sky claims, false promises, and deeply flawed studies that have ended up wasting the taxpayer money while also delaying Hawaii's ability to move forward in terms of developing and executing a sound, sustainable renewable energy policy.
4. From our perspective, HB1410 seems to be written to discourage our already established, "*boots-on-the-ground*," commercial biofuel companies which are creating local jobs now and which serve as an important revenue-growing source for the State. In terms of the Big Island Biodiesel plant which is being commissioned in Kea'au, and which is introducing cutting edge technological innovation as well as creating dozens of new quality jobs, I would like to go on record as stating that a pure production tax credit would be the best path to follow because it would enhance investment return for local investors as well as encourage expansion.

I would humbly suggest that you pass HB1410 out of committee with the appropriate changes to support the employees, investors and consumers who have taken the risk to pioneer the biofuel industry in Hawaii and need your help to incentivize future growth.

Mahalo for your hard work on this important issue and for your consideration of my testimony.

Sincerely,

Robert A. King
Founder and Board Chairman, Pacific Biodiesel Technologies, LLC
808-283-1954



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February 13, 2013

**TESTIMONY ON HB 1410, RELATING TO ENERGY
SUPPORT WITH AMENDMENTS**

TO: Rep. Chris Lee, Chair, Committee on Energy and Environmental Protection
Rep. Cynthia Thielen, Vice Chair, Comm. on Energy and Environmental Protection
Rep. Clift Tsuji, Chair, Committee on Economic Dev. & Business
Rep. Gene Ward, Vice Chair, Committee on Economic Dev. & Business

Hearing February 14, 2013 at 8:30 am, Conference Room 325

Dear Chairs Lee and Tsuji, Vice Chairs Thielen and Ward and Committee Members,

We, as employees of Big Island Biodiesel and Pacific Biodiesel, are testifying in support of House Bill 1410, to include important revisions made by the Hawaii Renewable Energy Alliance (HREA).

This bill will support biofuels that can be made locally, such as biodiesel. Biodiesel is cleaner and better for our environment and communities than petroleum fuels. This biofuel also moves us toward our state's energy independence goals. Of all the biofuels talked about today, biodiesel is the only one that is produced commercially in Hawaii.

We are excited to be working for Big Island Biodiesel (BIB). Through our new careers at BIB, we have local high-quality jobs working with advanced technology and making a real positive impact in our community. Many of us had not thought we would find these types of jobs available on the Big Island and are thrilled to find this industry emerging!

We feel that this bill, including the changes proposed by the HREA, would bring stability to the biofuel industry in Hawaii. It supports our mission to provide our neighborhoods with clean, sustainable fuels. Also, this bill could help our industry expand and allow more people to join us in similar locally-based biofuel careers.

We appreciate your time and consideration of our testimony in support of HB 1410 with revisions submitted by the HREA.

Mahalo,

Employees of Big Island Biodiesel and Pacific Biodiesel

Jenna Long
Jenna Long

Leheck Kekava
Leheck Kekava

Sandra McAuliffe
Sandra McAuliffe

Don Davis
DON DAVIS

Lucas Frank
Lucas Frank

Douglas Olds
Douglas Olds

B. Alisi Cannon
B. Alisi Cannon

[Signature]

[Signature]

[Signature]

HB 1410

RELATING TO ENERGY

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

February 14, 2013

Chairs Lee and Tsuji and members of the House Committees on Energy & Environmental Protection and Economic Development & Business.

I am Joel Matsunaga, testifying on behalf of Hawaii BioEnergy in support of HB 1410, “Relating to Energy.”

SUMMARY

Hawaii BioEnergy, LLC (“HBE”) supports HB 1410, which amends the Ethanol Facility Income Tax Credit to apply to various types of renewable fuel, with production and minimum required capacity to be measured in British Thermal Units (BTU). While this credit was intended to jumpstart the local ethanol industry, it hasn’t done so due to a number of factors. But with modifications to the credit to broaden the scope beyond just ethanol, it could foster the production of advanced, next-generation biofuels which can supply local power and transportation markets.

Restructuring the existing Ethanol Facility Credit to be technology neutral and BTU-based (i.e., energy content based, as opposed to based on specific types of fuels) would incentivize a broader range of advanced, more efficient biofuels that could have a wider range of users. This is particularly important as the biofuel refining process – similar to the petroleum refining process – can produce a mix of fuels (e.g., jet, gasoline, diesel) able to be sold to multiple end-users.

Applying a Biofuels Production Credit to projects capable of selling to both the transportation and power generation sector will help to attract a broader range of investors, maximize productive efficiencies, and integrate higher volumes of renewable fuels into Hawaii's economy. Further, applying the credit to new construction and establishing a sunrise date would help to provide assurance to investors and attract new, needed investment into the agro-industrial sector while not needlessly tying up state funds.

Maintaining a local feedstock provision within this legislation is important to maximizing the economic benefits that could accrue to Hawaii as a result of this credit and a local biofuels industry. HBE recognizes that testimony has been submitted to other committees expressing concern over local feedstock provisions and potential conflicts with the U.S. Constitution's Interstate Commerce Clause. However, four other U.S. states, including Montana (Montana Annotated Code 2009 15-70-522), Missouri (Missouri Revised Statutes 142.028), Louisiana (Louisiana Revised Statutes 3:3712), and Wyoming (Wyoming Revised Statutes 39-17-109) have passed similar biofuels incentives that require or support the use of local feedstock in order to be eligible for the incentive. These bills have been passed and successfully implemented without encountering conflicts with the Interstate Commerce Clause or being legally challenged

While HBE supports HB 1410, the company proposes to amend the measure by deleting "agricultural feedstock" and replacing it with "renewable feedstock", to be more inclusive of low-cost renewable waste feedstocks.

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.

Understanding the urgency of these needs, HBE has dedicated the last several years to feedstock trials, extensive technology evaluation and detailed financial modeling of various

production pathways in an effort to ensure HBE's ultimate production is as productive, efficient and sustainable as possible. HBE has signed a landmark 20-year off-take agreement for high-density fuels with Hawaiian Electric Company and is prepared to move forward with the commercial production of advanced biofuels for both the power generation and transportation sectors.

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. Further, the advanced conversion technologies capable of most efficiently converting bio-based feedstocks into high-density fuels are just reaching commercial scale. The advanced nature of the technology, coupled with the downturn in the economy, increase the challenges associated with securing project financing. Such limitations and cost impacts are particularly pronounced in Hawaii where the cost of doing business is already disproportionately high relative to the mainland.

Amending the Ethanol Facility Credit to a Biofuels Production 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. This credit is 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.

In addition to expanding the credit to apply to a broader range of fuels, it is key that the support applies to facilities producing fuels for both transportation and power generation, as commercial-scale biofuels refining facilities – similar to petroleum refining facilities - produce multiple fuels or 'splits' available for sale into multiple markets. Supporting production for both

various sectors maximizes productive efficiencies, strengthens the viability of the operation, and provides a broader slate of renewable fuels for Hawaii customers.

Basing the credit on British Thermal Units, and structuring the credit to support new investment in these advanced technologies will foster more efficient production while creating jobs, stimulating Hawaii's agricultural sector, and establishing the foundation from which Hawaii's bio-based economy can grow. Based on a third-party economic impact analysis of biofuels production on the Islands, the job creation as well as the direct and indirect economic impacts, and tax revenue associated with the credit would far outweigh the cost. Further, applying a sunrise date to the incentive would help project developers to secure critical project financing while not tying up state funds.

HB 1410 contains a local feedstock provision, which 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 recognizes that there has been some concern expressed that such a provision may conflict with the US Constitution's Interstate Commerce Clause. However, HBE would like to point out that several other states have passed and implemented legislation fostering in-state biofuels feedstock production without encountering Interstate Commerce issues. HBE contacted state bioenergy coordinators in each of these states and none have encountered Interstate Commerce issues nor has the matter been legally challenged.

Though HBE supports HB 1410, the company believes the measure could be strengthened by replacing "agricultural feedstock" with "renewable feedstocks" to be more inclusive. "Renewable feedstocks" means biomass crops; agricultural residues; oil crops, including but not limited to algae and jatropha; other agricultural crops; grease and waste cooking oil; food wastes; municipal solid wastes and industrial wastes; and animal residues and wastes that can be used to generate energy."

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 and sustain the states agricultural resources for years to come. Long-term contracts, such as the contract between HBE and HECO (which requires multiple customers) and incentives such as a Biofuels Production Tax Credit, help to reduce total project costs and associated risks, making project more attractive to outside investors and financing institutions. HB 1410 would play a critical role in establishing Hawaii's biofuel industry, strengthening the state's energy security position, and achieving the state's renewable energy goals. Based on the aforementioned, Hawaii BioEnergy respectfully requests your support for HB 1410, with amendment.

Thank you for the opportunity to testify.

A BILL FOR AN ACT

RELATING TO ENERGY.

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

SECTION 1. The legislature finds that, in addition to ethanol, pyrolysis oil, renewable diesel, bio-gasoline and bio-jet fuel are examples of potential fuels that could be produced in Hawaii from local renewably grown agricultural feedstock.

Despite Hawaii's favorable climate and biomass growth potential, commercial-scale biofuels production is constrained, largely because of limited land availability. The non-contiguous nature of land parcels and competing land uses make maximizing biofuel production per unit of land and water critical. First generation feedstocks including sugar and oilseed crops combined with conventional fermentation or transesterification conversion technology presently produce no greater than one hundred gallons per acre. Second generation biofuels produced from dedicated energy crops, however, produce roughly five times the volume of output on a per acre basis. Further, second-generation conversion technologies can produce high-energy-density fuels that are compatible with

existing infrastructure. Given the State's limited land, these second generation technologies offer the best hope of substantially increasing local biofuel production while minimizing the impact on land and resources. With these second-generation benefits, however, comes increased capital costs and investment risk. A biofuel production facility credit targeting second-generation production could help ameliorate this risk while helping to jumpstart a new, bio-based industry for the Hawaii.

Applying a tax credit to biofuel production facilities that commence construction on or after January 1, 2014, would help to foster new investment and construction in the State. Facilities that have already commenced construction have likely secured the necessary financing and would be moving forward regardless of the credit. Applying a tax credit to new construction would help jumpstart an advanced, high-tech industry while creating demand from other sectors of the local economy, including construction, which have been badly hit by the economic slowdown.

Advanced feedstock and conversion technologies will help minimize the land, water, and resource footprint of biofuel operations while generating a portfolio of energy outputs and value-added co-products. Encouraging advanced technology would enhance sustainability, attract higher levels of capital

investment, and help establish Hawaii as a center for bio-based innovation.

At present, a tax credit is allowed based on the percentage of nameplate capacity up to a limit of less than fifteen million gallons. Amending the language to provide for a 30 cents per one hundred fifteen thousand British thermal units of renewable biofuels would enhance administrative efficiency and provide incentive for the production of higher-density fuels. Further, removing the fifteen million gallon per year facility cap would allow larger-scale facilities to also benefit from the incentive. Maintaining the statutory requirement that the facility must operate at or above seventy-five per cent capacity in order to claim the credit would also help to ensure the credit helps bring the greatest volume of fuels to market.

Finally, incorporating a sunrise date that applies a tax credit to taxable years after December 31, 2014, would help to provide assurance to investors and project developers that support would be available, while not unnecessarily tying up state funds.

The purpose of this Act is to modify the existing ethanol facility tax credit to include other liquid biofuels and to enable larger facilities to be eligible for the tax incentive, without changing the level of incentive or cap per facility. Amending the current statute to incorporate biofuels

and to foster advanced technology is key to supporting a broader range of high-density biofuels producers, enhancing land use and production efficiency, attracting high-tech investment to the State, spurring agricultural and economic development, and minimizing the State's petroleum dependence and emissions.

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.]~~ 30 cents per one hundred fifteen thousand British thermal units of biofuels; provided that the biofuel production facility's capacity is not less than five hundred seventy-five billion British thermal units of biofuel per year; provided further that the amount of the tax

credit claimed under this section by a taxpayer shall not exceed \$3,000,000 per taxable year. 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 the credit period;
- (2) The qualifying ~~[ethanol]~~ biofuel production facility operated at a level of production of at least seventy-five per cent of its nameplate capacity on an annualized basis;
- (3) The qualifying biofuel production facility is located within the State and, if available, uses locally produced, renewable agricultural feedstock for at least seventy-five per cent of its production output;
- ~~(4)~~ (4) The qualifying ~~[ethanol]~~ biofuel production facility ~~[is in production on or before January 1, 2017,]~~ commences construction on or after January 1, 2014; and

[44] (5) No taxpayer that claims the credit under this section shall claim any other tax credit under this chapter for the same taxable year.

(b) As used in this section:

"Renewable feedstocks" means biomass crops; agricultural residues; oil crops, including but not limited to algae and jatropha; other agricultural crops; grease and waste cooking oil; food wastes; municipal solid wastes and industrial wastes; and animal residues and wastes that can be used to generate energy. ~~"Agricultural feedstock" includes but is not limited to: sugar cane; byproducts from sugar cane; sweet sorghum; sugar beets; biomass; renewable oils; fiber; algae; woody biomass; and other biological materials.~~

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"Biofuel" means ethanol; pyrolysis oil; renewable diesel; bio-gasoline; bio-jet fuel; or any other liquid fuel that meets the relevant biofuel specifications of ASTM International and is produced from renewable agricultural feedstock.

"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 even if actual production is not at seventy-five per cent of nameplate capacity.

"Investment" means a nonrefundable capital expenditure related to the development and construction of any new

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. Direct capital expenditures in agricultural infrastructure, including irrigation and drainage systems, land clearing and leveling, establishment of crops, planting, and cultivation where the qualifying biofuel production facility and agricultural operations are integrated shall be eligible. Capital expenditures shall be those direct and certain indirect costs determined in accordance with section 263A 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, 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 of the Internal Revenue Code (with respect to deductions limited to amount at risk).

~~["Nameplate capacity" means the qualifying ethanol production facility's production design capacity, in gallons of motor fuel grade ethanol per year.]~~

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

"Qualifying ~~[ethanol]~~ biofuel production" means ~~[ethanol]~~ biofuel produced from ~~[renewable, organic feedstocks, or waste materials, including municipal solid waste. All qualifying production shall be fermented, distilled, gasified, or produced by physical chemical conversion methods such as reformation and catalytic conversion and dehydrated at the facility.]~~ renewable feedstocks produced within the State; provided that the renewable transportation fuel shall be sold in the State.

"Qualifying ~~[ethanol]~~ biofuel production facility" or "facility" means a facility located in Hawaii ~~[which]~~ that produces ~~[motor]~~ fuel grade ~~[ethanol meeting the minimum specifications by the American Society of Testing and Materials standard D-4806, as amended.]~~ biofuel from renewable feedstocks and that meets the relevant ASTM International specifications

for that particular fuel or other industry specifications for the production of:

- (1) Methanol, ethanol, or other alcohols;
- (2) Hydrogen;
- (3) Biodiesel or renewable diesel;
- (4) Biofuels derived from biological materials, including algae; or
- (5) Renewable jet fuel, renewable gasoline, or liquid or gaseous fuels.

(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 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;~~] and type of biofuel produced;
- (3) Total all qualifying [~~and cumulative investments~~] biofuel production facilities 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.

Upon each determination, the department of business, economic development, and tourism shall issue a certificate to the taxpayer verifying the qualifying [~~investment amounts,~~] volume of biofuel production, 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~~] may 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.~~] Alternatively, the department of business, economic development, and tourism may increase the cap according to the

level of demand for qualified biofuel production; provided that the department of business, economic development, and tourism shall report to the legislature the rationale and justification for any such increase in its next annual report to the legislature. 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 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 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 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 construction of a qualifying ~~[ethanol]~~ biofuel production 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)]~~ ~~If a qualifying ethanol production facility fails to achieve an average annual production of at least seventy-five per cent of its nameplate capacity for two consecutive years, the stated capacity of that facility may be revised by the director of business, economic development, and tourism to reflect actual production for the purposes of determining statewide production capacity under subsection (g) and allowable credits for that facility under subsection (a). Notwithstanding any other law to the contrary, this information shall be available for public inspection and dissemination under chapter 92F.~~

~~(k)~~ (i) 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]~~ British thermal units of ~~[ethanol]~~ biofuel produced and sold during the previous calendar year, how much was sold in Hawaii versus overseas, ~~[feedstocks]~~ the percentage of Hawaii-grown feedstock produced in Hawaii and other feedstock used for ~~[ethanol]~~ biofuel production, the number of employees of the facility, and the projected number of ~~[gallons]~~ British thermal units of ~~[ethanol]~~ biofuel production for the succeeding year.

~~(l)~~ (j) 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)~~ (k) 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]~~ include in its annual report to the governor and legislature ~~[regarding the production and sale of ethanol. The report shall include:]~~ the following:

- (1) The number, location, and nameplate capacities of qualifying [~~ethanol~~] biofuel production facilities in the State;
- (2) The total number of [~~gallons~~] British thermal units of [~~ethanol~~] biofuel produced and sold during the previous year; and
- (3) The projected number of [~~gallons~~] British thermal units of [~~ethanol~~] biofuel production for the succeeding year.

[~~(n)~~] (1) 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 of taxation 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. This Act does not affect rights and duties that matured, penalties that were incurred, and proceedings that were begun before its effective date.

SECTION 4. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 5. This Act, upon its approval, shall apply to taxable years beginning after December 31, 2014.

INTRODUCED BY: _____

Report Title:

Renewable Fuels; Biofuels; Ethanol; Tax Credits

Description:

Replaces the ethanol facility tax credit with the biofuel production facility tax credit. Expands tax credit eligibility to include larger facilities and production of multiple types of biofuel. Changes the formula for calculating the amount of tax credit allowed and caps the amount of tax credits allowed. Limits the credit to Hawaii biofuel production facilities. Allows the Department of Business, Economic Development, and Tourism to increase the aggregate tax cap with reporting requirements. Applies to taxable years beginning after December 31, 2014.

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



Directors

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AES-Solar

Joe Boivin
The Gas Company

Kelly King
Pacific Biodiesel

Warren S. Bollmeier II
WSB-Hawaii

TESTIMONY OF WARREN BOLLMEIER ON BEHALF OF THE
HAWAII RENEWABLE ENERGY ALLIANCE BEFORE THE
HOUSE COMMITTEES ON ENERGY AND ENVIRONMENTAL PROTECTION,
AND ECONOMIC DEVELOPMENT & BUSINESS

HB 1410, RELATING TO ENERGY

February 14, 2013

Chairs Lee and Tsuji, Vice-Chairs Thielen and Ward, and members of the Committees I am Warren Bollmeier, testifying on behalf of the Hawaii Renewable Energy Alliance (“HREA”). HREA is an industry-based, nonprofit corporation in Hawaii established in 1995. Our 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 our 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 purposes of HB 1410 are to: (i) replace the ethanol facility tax credit with the biofuel production facility tax (ii) Expands tax credit eligibility to include larger facilities and production of multiple types of biofuel, (iii) change the formula for calculating the amount of tax credit allowed and caps the amount of tax credits allowed, (iv) limit the credit to Hawaii biofuel production facilities, (v) allow the department of business, economic development, and tourism to increase the aggregate tax cap with reporting requirements, and (vi) apply to taxable years beginning after December 31, 2014.

HREA **supports the intent** of this measure, as it points in the right direction. However, we offer the following comments and the attached “HREA Proposed HD1 for your consideration:

- 1) Section 1 (Preamble). We believe there are few inaccuracies in this section, such as leaving out biodiesel as a biofuel in Hawaii. We support legislation that allows the best technologies to emerge regardless whether are not they are first or second generation. See proposed amendments in the attached.
- 2) Section 2 (Proposed Revisions to the HRS). Per our proposed amendments, we support allowing the credit to apply to facilities that have been or are in production after December 31, 2012. We also recommend changes to the definitions of agricultural feedstock, biofuel, and qualifying biofuel production. We also recommend keeping the definition of nameplate capacity in the measure. In addition, we can't stress enough the need for all qualifying biofuels to be certified to ASTM standards.
- 3) Comments & Questions. In Section 2 (p. 4, line 16), we believe there may be a need to clarify the term taxpayer based on number of equity partners, i.e., pro-rate the total tax among the partners. Finally, we can't stress enough the importance that we allow this credit to apply to commercial technologies, and that we work together will all potential suppliers that can bring second generation technologies to Hawaii

Mahalo for this opportunity to testify

Attachment



SENT VIA EMAIL

February 13, 2013

Representative Chris Lee
Chair, Committee on Energy and Environmental Protection
Representative Clift Tsuji
Chair, Committee on Economic Development and Business
Hearing on House Bill 1410 - Relating to Energy
State Capitol, Conference Room 325

Aloha Chairs Lee and Tsuji!

Enterprise Honolulu stands in strong support of House Bill 1410 and its intentions. However, we propose amending HB 1410 to include biodiesel as a proven bio-fuel currently in commercial production in Hawaii and amend language to support Hawaii businesses involved in biodiesel production.

As Hawai'i continues to improve and build upon our current economic condition – this legislation will provide a means to support Hawaii's businesses involved in all forms of biofuel production (including biodiesel) through the biofuel production facility tax credit.

We ask for your legislative support with this important initiative.

Please feel free to contact me directly should you have any questions.

Sincerely,

Pono Shim
President & CEO
Enterprise Honolulu, Oahu Economic Development Board

