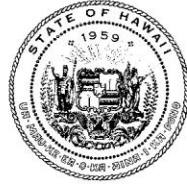


NEIL ABERCROMBIE
GOVERNOR

SHAN TSUTSUI
LT. GOVERNOR



FREDERICK D. PABLO
DIRECTOR OF TAXATION

JOSHUA WISCH
DEPUTY DIRECTOR

STATE OF HAWAII
DEPARTMENT OF TAXATION
P.O. BOX 259
HONOLULU, HAWAII 96809
PHONE NO: (808) 587-1540
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To: The Honorable Chris Lee, Chair
and Members of the House Committee on Energy and Environmental Protection

Date: Thursday, January 30, 2014
Time: 8:30 A.M.
Place: Conference Room 325, State Capitol

From: Frederick D. Pablo, Director
Department of Taxation

Re: H.B. 2060, Relating to Taxation

The Department of Taxation (Department) appreciates the intent of H.B. 2060, and provides the following information and comments for your consideration.

H.B. 2060 repeals the existing income tax credit for ethanol facilities and adds a new tax credit for the production of renewable fuels. The tax credit would be certified by the Department of Business, Economic Development, and Tourism and would have a per taxpayer cap of \$3,000,000 per year and an aggregate cap of \$12,000,000 per year.

The Department defers to the Department of the Attorney General for a more thorough analysis of the constitutionality of H.B. 2060, but notes that tax measures that discriminate against interstate commerce are generally held unconstitutional by the courts. For example, 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 violate the Commerce Clause of the United States Constitution. The Department suggests changing or removing the requirement that feedstocks be transported less than 1,000 miles from their point of origin, which would exclude feedstocks from outside the State, as well as the requirement that fuel produced be distributed within the State.

Aggregate caps are difficult for the Department to administer and lead to confusion among taxpayers regarding which taxpayers may be eligible for the tax credit during any particular taxable year. In addition, it is the Department's understanding that the amount of this

credit would roughly correspond to 20 cents per gallon of fuel produced, meaning that there is a high likelihood that the caps would be reached with some frequency if large-scale production operations commence in the State.

Thank you for the opportunity to provide comments.



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January 28, 2014

**Testimony on House Bill 2060, Relating to Taxation
SUPPORT**

Committee on Energy and Environmental Protection
Representative Chris Lee, Chair
Representative Cynthia Thielen, Vice Chair
Hearing January 30, 2014 at 8:30am, House Conference Room 325

Dear Chair Lee, Vice Chair Thielen and Committee Members,

The employees, management and investors of the Pacific Biodiesel ohana thank you for introducing House Bill 2060 for consideration by the Committee on Energy and Environmental Protection. This bill is crucial to growing the biofuels industry in Hawaii, especially since our state is far behind in our transportation renewable energy goals. We wholeheartedly testify in favor of HB 2060.

This bill supports the State of Hawaii's interest in becoming more energy self-sufficient; however, we do ask you to consider reinstating the previous level of \$.30 per 115,000 BTUs and move the effective date to July 1, 2014 to bring maximum benefits to producers at this time of critical need. If HB 2060 is passed, it will be one of the most important actions the Legislature can take to incentivize renewable fuel production, support current and future local jobs as well as ensure the future energy security of our island communities.

Pacific Biodiesel employs over 75 people in a wide range of positions from chemists to engineers, office and sales personnel to biodiesel facility operators and farmers, as well as outside consultants. Employment represents \$3 million in wages paid in 2013 and continued operations generate over \$10 million in revenue for the State of Hawaii every year. When biodiesel is purchased from Pacific Biodiesel in Hawaii, over 85% of the money stays in the Hawaii economy, and 98% of the money stays in the US economy. This is truly an economic boost as opposed to the economic drain of foreign petroleum.

It is the goal of all those connected with Pacific Biodiesel to continue with our mission to promote a clean, sustainable energy future through the community-based production of renewable fuels, but we need your help as federal support for biofuel continues to be inconsistent and short-term. Meanwhile, the petroleum industry with whom we must compete enjoys on-going, statutory support at all levels of government.

We ask you to consider our proposed changes and please pass HD 2060 to support the continued efforts of renewable fuel producers throughout the State of Hawaii.

Mahalo,

A handwritten signature in black ink that reads "Kelly T. King".

Kelly King
Vice President
ktk@biodiesel.com



Directors

Jody Allione
Silver Ridge

Joe Boivin
Hawaii Gas

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 COMMITTEE ON ENERGY AND ENVIRONMENTAL PROTECTION

HB 2060, Relating to Taxation

January 30, 2014

Chair Lee, Vice-Chair Thielen, and members of the Committee 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 2060 are to: (i) establish a renewable fuels production tax credit to achieve greater energy security for Hawaii, and (ii) repeal the Ethanol Facility Tax Credit.

HREA **strongly supports** this measure with the following comments:

- 1) Meeting Our Clean Energy. This measure supports our clean energy goals by encouraging business opportunities in the production of renewable fuels in Hawaii.
- 2) Merits of a Production Tax Credit ("PTC"). We believe a PTC is the best way for the state to support biofuel production in Hawaii. With a PTC, a "producer" gets paid when the producer actually produces, not when he installs his production facility. This reduces the risk to the state significantly. The PTC has other features that we find attractive:
 - a) we believe the PTC will be easy to administer, including the qualification of biofuel facilities, and documentation of the types and amounts of biofuels produced and sold in Hawaii; and
 - b) the PTC will help encourage the production of local biofuels, through the facilitation of effective producer-ag grower relationships
- 3) Recommendations. We recommend that the payment rate per 115,000 BTU be increased to 30 cents, which was the amount included in previous versions of this bill, and leave the CAP per project at \$3M. With that amendment we recommend that the committee pass out this measure, and help us recover from the "sluggish" start we have witnessed in the fuels part of the Hawaii Clean Energy Initiative.

Mahalo for this opportunity to testify.

TAXBILLSERVICE

126 Queen Street, Suite 304

TAX FOUNDATION OF HAWAII

Honolulu, Hawaii 96813 Tel. 536-4587

SUBJECT: INCOME, Renewable fuels production tax credit

BILL NUMBER: HB 2060

INTRODUCED BY: C. Lee

BRIEF SUMMARY: Adds a new section to HRS chapter 235 to establish a renewable fuels production tax credit. The credit shall be allowed to taxpayers producing qualifying renewable fuels provided the credit shall not be claimed for more than five years.

The annual dollar amount of the credit shall be 20 cents per 115,000 British thermal units (BTU) of renewable fuels using the lower heating value produced for distribution in Hawaii; provided that the production by the facility is not less than 15 billion BTUs of renewable fuels per year. Limits the amount of tax credit that may be claimed by a taxpayer to \$3 million per taxable year.

Defines “credit period,” “net income tax liability” and “qualifying renewable fuels.” “Renewable fuels” are fuels produced in the state from renewable feedstocks transported less than one thousand miles from point of origin to the production facility located in the state. The fuel shall be sold in the state as a fuel and meet the relevant ASTM International specifications for the particular fuel or other industry specifications for liquid or gaseous fuels, including but not limited to: (1) methanol, ethanol, or other alcohols; (2) hydrogen; (3) biodiesel or renewable diesel; (4) other biofuels; or (5) renewable jet fuel or renewable gasoline. Defines “renewable feedstocks” as biomass crops; agricultural residues; oil crops, including but not limited to algae, canola, jatropha, palm, soybean and sunflower; 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.

Requires the department of business, economic development and tourism (DBEDT) to verify and certify each claim for the credit including the total amount of credit for each taxable year and the cumulative amount of tax credit during the credit period. The department shall issue a certificate to qualifying taxpayers who shall file the certificate with the department of taxation (DOTax).

If in any year the annual amount of certified credits reaches \$12 million in the aggregate, DBEDT may discontinue certifying credits and notify the department of taxation.

If the amount of credits exceeds the taxpayer’s income tax liability, the excess of credit over liability may be carried over to future years.

Prior to production of any qualifying renewable fuels for the year, the taxpayer is to provide written notice of the taxpayer’s intention to begin production of qualifying renewable fuels to DOTax and DBEDT with information on the taxpayer, facility location, facility production capacity, anticipated production start date, and the taxpayer’s contact information. The taxpayer shall also provide written

notice to the director of taxation and the director of DBEDT within 30 days following the start of production and include the production start date and expected renewable fuel production for the next year.

In each calendar year during the credit period, the taxpayer shall provide information to the director of DBEDT on the number of BTUs of renewable fuels produced and sold during the previous calendar year, the type of fuels, feedstocks used for renewable fuels production, the number of employees of the facility and each employee's state of residency, and the projected number of BTUs of renewable fuels production for the succeeding year.

Directs the director of DBEDT, following each year in which a credit under this section has been claimed, to submit a written report to the governor and legislature regarding the production and sale of renewable fuels. Requires the department of taxation to prepare the necessary forms to claim the credit, requires the taxpayer to furnish information to validate a claim for the credit.

Repeals the ethanol facility tax credit under HRS section 235-110.3.

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 replace the ethanol facility tax credit with a renewable fuels production tax 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 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 goes 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: (1) provide some accountability for the taxpayers' funds being utilized to support this effort; and (2) not be a blank check.

While ethanol was the panacea of yesterday, lawmakers have learned that there are more minuses 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 demand for feedstock that is used to produce ethanol basically redirects that feedstock away from traditional uses, causing products derived from the feedstock to substantially increase in price.

An appropriation of taxpayer dollars for such untried and unproven technologies would be far more accountable than the tax credit as such technologies would have undergone the scrutiny of lawmakers. Providing a tax incentive is an indicator that lawmakers are unwilling to do the hard research and unwilling to impose strict discipline in the expenditure of hard-earned tax dollars. The tax incentive approach represents nothing more than a hope and a wish that some breakthrough will be made, no matter how inefficient it may be, that some alternative to fossil fuel will be found. In the mean time, those tax dollars will be wasted on some unproven folly. If this were an appropriation, taxpayers would then know who to hold accountable for the waste of those tax dollars.

This, along with numerous other proposals targeted at certain types of business activity, is truly an indictment of what everyone has known and acknowledged since before Hawaii became a state, that is, the climate imposed by government regulations and taxation makes it difficult to survive without some kind of subsidy such as tax credits from government. Once those subsidies disappear, so will the businesses. Instead of throwing out such breaks for special interests, lawmakers must endeavor to make Hawaii's business climate more welcoming and conducive to nurturing budding entrepreneurs.

Digested 1/28/14

HB 2060

RELATING TO TAXATION

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

January 29, 2014

Chair Lee, Vice-Chair Thielen and members of the House Committee on Energy & Environmental Protection.

I am Joel Matsunaga, testifying on behalf of Hawaii BioEnergy in support of HB 2060, "Relating to Taxation."

SUMMARY

Hawaii BioEnergy, LLC ("HBE") supports HB 2060, which amends the existing 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 ("BTUs"). While the credit, which was established to jumpstart the local ethanol industry, could be useful to prospective producers, it is limiting in both its scope and impact and needs to be reformed in order to 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 would incentivize a broader range of advanced, more efficient biofuels applicable to multiple off-takers. This is particularly important as the biofuel refining process – similar to the petroleum refining process – can produce a slate of fuels able to be sold to multiple end-users.

Applying a Renewable Fuels Production Tax 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.

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 landowners 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, 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'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, and the Air Force Research Laboratory. Collectively, this analysis has enabled HBE to understand the production potential and challenges associated with Hawaii's unique natural resource base, geography, climate, market and infrastructure. HBE has signed a 20-year off-take agreement for high-density fuels with Hawaiian Electric Company and is preparing 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 Renewable Fuels Production Tax 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.

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 Renewable Fuels Production Tax Credit help to reduce total project costs and associated risks, making project more attractive to outside investors and financing institutions. HB 2060 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 2060.

Thank you for the opportunity to testify.



HOUSE COMMITTEE ON ENERGY & ENVIRONMENTAL PROTECTION

January 30, 2014, 8:30 A.M.

Room 325

(Testimony is 1 page long)

TESTIMONY IN SUPPORT OF HB 2060

Chair Lee and members of the Energy & Environmental Protection Committee:

The Blue Planet Foundation supports HB 2060, 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.

Blue Planet also supports policy to require that a certain percentage (5%, 10%) of diesel fuel sold in Hawai'i be biodiesel. One of Hawai'i's entrepreneurial success stories is biodiesel, a fuel that can be created from recycled cooking grease and oils or grown locally, and that can be substituted in place of fossil fuel-based diesel for transportation. Already, this local industry is creating enough fuel to displace 5% of transportation diesel fuel sold in the state. The biofuels industry is also making headway on the state's use of aviation fuels; HawaiiBioenergy has completed an agreement with Alaska airlines to power Hawai'i flights with biofuels starting as soon as 2018. Blue Planet supports a mandate to blend biodiesel with all locally sold diesel fuel. This smart step will help to continue the momentum for a local industry to supply indigenous clean energy for our transportation energy needs.

Thank you for the opportunity to testify.

info@blueplanetfoundation.org

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HB2060

Submitted on: 1/29/2014

Testimony for EEP on Jan 30, 2014 08:30AM in Conference Room 325

Submitted By	Organization	Testifier Position	Present at Hearing
pat gegen	Individual	SupportNo	

Comments: Fully support credits for Local renewable fuels! No shipping them in like ethanol - please get rid of that!

Please note that testimony submitted less than 24 hours prior to the hearing, improperly identified, or directed to the incorrect office, may not be posted online or distributed to the committee prior to the convening of the public hearing.

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HB2060

Submitted on: 1/29/2014

Testimony for EEP on Jan 30, 2014 08:30AM in Conference Room 325

Submitted By	Organization	Testifier Position	Present at Hearing
Denise Key	Individual	SupportNo	

Comments: I support HB2060. This measure is critical to the future of sustainable biofuels in Hawaii, especially for transportation where our state is extremely behind in our renewable energy goals. We live on an island. Be Pono Respectfully Denise Key

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HB2060

Submitted on: 1/29/2014

Testimony for EEP on Jan 30, 2014 08:30AM in Conference Room 325

Submitted By	Organization	Testifier Position	Present at Hearing
Erin Wooldridge	Individual	Support	No

Comments:

Please note that testimony submitted less than 24 hours prior to the hearing, improperly identified, or directed to the incorrect office, may not be posted online or distributed to the committee prior to the convening of the public hearing.

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

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GOVERNOR

RICHARD C. LIM
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Statement of
Richard C. Lim
Director

Department of Business, Economic Development, and Tourism
before the

HOUSE COMMITTEE ON ENERGY AND ENVIRONMENTAL PROTECTION

Thursday, January 30, 2014
8:30 a.m.

State Capitol, Conference Room 325

in consideration of
HB 2060
RELATING TO TAXATION.

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

The Department of Business, Economic Development and Tourism (DBEDT) offers comments on HB 2060, which would establish a renewable fuels production tax credit and repeal the ethanol facility tax credit.

DBEDT defers to the Department of Taxation on the fiscal impact of the bill, and notes that the definition of “renewable fuels” in the bill, which requires that feedstock must be transported from points of origin “less than one thousand miles” away from the production facility, may be in conflict with the commerce clause of the US Constitution. Additionally, the financial and human resources required to administer the duties mandated by this bill are not included in DBEDT’s current budget.

Thank you for the opportunity to offer these comments.