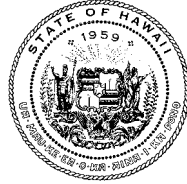


NEIL ABERCROMBIE  
GOVERNOR

SHAN TSUTSUI  
LT. GOVERNOR



STATE OF HAWAII  
**DEPARTMENT OF TAXATION**  
P.O. BOX 259  
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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

Date: Tuesday, March 19, 2013  
Time: 8:30 A.M.  
Place: Conference Room 325, State Capitol

From: Frederick D. Pablo, Director  
Department of Taxation

Re: S.B. 15 S.D. 2, Proposed H.D. 1, Relating to Energy

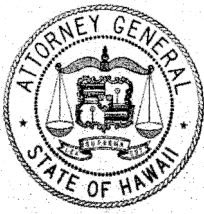
The Department **appreciates the intent** of S.B. 15 S.D. 2, Proposed H.D. 1 and provides the following information and comments for your consideration.

S.B. 15 S.D. 2, Proposed H.D. 1 creates a biofuel production tax credit of thirty cents per gallon of biofuel with an energy content of 114,000 British thermal units per gallon, and twenty cents per gallon for biofuels with an energy content of below 114,000 British thermal units per gallon. The tax credit is to be certified by the Department of Business, Economic Development, and Tourism, and has an aggregate cap of \$12,000,000 per year.

The Department notes that this proposed tax credit is administered per gallon of fuel produced, meaning that for industrial scale operations, the aggregate cap will be reached extremely quickly during any given taxable year. In general, aggregate caps, particularly those administered by other departments, are more difficult for the Department to implement and often result in confusion for taxpayers. Additionally, it is much harder for the Department to enforce proper compliance with the tax provisions. Instead, the Department suggests changing this proposed tax credit to a grant program for the production of biofuels.

The Department defers to the Department of the Attorney General for an analysis of the constitutionality of this bill, but notes that 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. This bill's requirement that renewable feedstocks be transported less than a thousand miles may be discriminatory against interstate commerce. The Department therefore suggests removing this requirement.

Thank you for the opportunity to provide comments.



**TESTIMONY OF  
THE DEPARTMENT OF THE ATTORNEY GENERAL  
TWENTY-SEVENTH LEGISLATURE, 2013**

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**ON THE FOLLOWING MEASURE:**

S.B. NO. 15, S.D. 2, PROPOSED H.D. 1, RELATING TO ENERGY.

**BEFORE THE:**

HOUSE COMMITTEE ON ENERGY AND ENVIRONMENTAL PROTECTION

**DATE:** Tuesday, March 19, 2013

**TIME:** 8:30 a.m.

**LOCATION:** State Capitol, Room 325

**TESTIFIER(S):** David M. Louie, Attorney General, or  
Gregg J. Kinkley, Deputy Attorney General

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Chair Lee and Members of the Committee:

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

The purpose of this bill as introduced was to broaden the existing ten percent ethanol fuel content requirement in gasoline to all biofuels. Although your Committee has scheduled a hearing on the Proposed H.D. 1, our concern relates to the language included in S.D. 2 which is incorporated into the Proposed H.D. 1, as part I. Our comments below are restricted to part I, pages 1-5.

In its current form, this bill requires that locally produced biofuels account for at least five percent of the annual sales of distributors selling liquid fuels in the State for use in motor vehicles. This bill further requires the Director of Business, Economic Development, and Tourism (“director”) to adopt rules permitting in-state sales levels of biofuels under the five percent minimum if sufficient quantities of competitively priced biofuel are not available, or if compliance with this requirement would otherwise cause undue hardship. To the extent that the bill results in the exclusion of or discriminates against out-of-state or imported fuels, constitutional concerns under article I, section 8, clause 3 (the “Commerce Clause”) of the United States Constitution are raised.

Under the Commerce Clause, Congress is empowered to regulate foreign and interstate commerce. Further, as Congress is empowered to regulate interstate commerce, the states are generally prohibited from regulating it. This negative side of the Commerce Clause is usually referred to as the “Dormant Commerce Clause,” and prevents a state from “jeopardizing the welfare of the Nation as a whole” by “plac[ing] burdens on the flow of commerce across its

borders that commerce wholly within those borders would not bear.” Oklahoma Tax Comm'n v. Jefferson Lines, Inc., 514 U.S. 175, 180 (1995).

Under the Dormant Commerce Clause, a two-tiered analysis has developed:

In reviewing challenges to local regulations under the [dormant] Commerce Clause, we follow a two-tiered approach: When a state statute directly regulates or discriminates against interstate commerce, or when its effect is to favor in-state economic interests over out-of-state interests, we have generally struck down the statute without further inquiry. When, however, a statute has only indirect effects on interstate commerce and regulates evenhandedly, we have examined whether the State’s interest is legitimate and whether the burden on interstate commerce clearly exceeds the local benefits.

S.D. Myers, Inc. v. City and County of San Francisco, 253 F.3d 461, 466 (9th Cir. 2001). As our own federal district court summarized it, “A state regulation violates the ‘dormant commerce clause’ if (1) the regulation facially discriminates against interstate commerce; or (2) a regulation that is facially neutral excessively burdens interstate commerce in relation to local benefits.” UFO Chuting of Hawaii, Inc., v. Young, 380 F. Supp. 2d 1166, 1175 (2005). Hence, the initial inquiry is to determine if the statute in question appears to discriminate, be protectionist, or directly affect interstate commerce. If the law “passes” this tier by being found not to affect interstate commerce, or at least not directly so, then the second tier “balancing test” is applied to determine if the (indirect) burden imposed is outweighed by the local benefits it advances. “Where the statute regulates even-handedly to effectuate a legitimate local public interest, and its effects on interstate commerce are only incidental, it will be upheld unless the burden imposed on such commerce is clearly excessive in relation to the putative local benefits.” Pike v. Bruce Church, Inc., 397 U.S. 137, 142 (1970).

The wording relevant to the Dormant Commerce Clause is in part I, section 2 of the Proposed H.D. 1 of this bill (page 2, lines 19 – 22; page 3, lines 1-2):

The director shall adopt rules in accordance with chapter 91 to require that each distributor who sells liquid fuels in the State for use in motor vehicles shall ensure that locally-produced biofuels account for at least five per cent of the distributor’s annual sales of liquid fuels for motor vehicles by volume; provided that for diesel fuel, no more than five per cent of locally produced biofuel shall be required.

The provision requiring “locally produced” biofuel is clearly discriminatory, excluding on its face the use of interstate fuel to meet the new five percent rule. Therefore, as written, this bill appears facially discriminatory.

There is another provision of this bill that deserves some attention, found at page 3, lines 14 - 22:

- (b) The director may authorize the sale of fuel that does not meet the provisions of this section:
  - (1) To the extent that sufficient quantities of competitively priced biofuel are not available to meet the requirements of this section; or
  - (2) In the event of any other circumstances for which the director determines compliance with this section would cause undue hardship.

This grant of additional discretion given to the director (the “director’s waiver rule”) could be used to address the discriminatory aspect of the bill: “if . . . sufficient quantities . . . of . . . competitively priced biofuel are not available.” Because the determination depends on competitive pricing, one could interpret the force of the bill as a whole to mean that in-state biofuel would be used to fulfill the five percent requirement *unless cheaper outside sources of fuel are available*, a result that should not have an adverse effect on interstate commerce, but instead mimics the actions of a free market. This alternative however is discretionary, not mandatory; therefore, even though systematic use of this alternative could save this bill from constitutional attack, the basic, mandatory part of this bill remains discriminatory.

In cases where there is a finding of facial discrimination, the statute is presumed unconstitutional. As summarized succinctly in Maine v. Taylor, 477 U.S. 131, 138 (1986):

In determining whether a State has overstepped its role in regulating interstate commerce, this Court has distinguished between state statutes that burden interstate transactions only incidentally, and those that affirmatively discriminate against such transactions. While statutes in the first group violate the Commerce Clause only if the burdens they impose on interstate trade are “clearly excessive in relation to the putative local benefits,” Pike v. Bruce Church, Inc., 397 U.S. 137, 142,(1970), statutes in the second group are subject to more demanding scrutiny. The Court explained in Hughes v. Oklahoma, 441 U.S. at 336, that once a state law is shown to discriminate against interstate commerce “either on its face or in practical effect,” the burden falls on the State to demonstrate both that the statute “serves a legitimate local purpose,” and that this purpose could not be served as well by available nondiscriminatory means.

Facially discriminatory provisions are thus subjected to the stricter scrutiny of whether the purpose could be served by nondiscriminatory means. This is a difficult test, both to apply and to pass. It could be argued that the “director’s waiver rule” provisions discussed above provide a possible, nondiscriminatory approach to satisfying the State’s purpose of promoting biofuel content in motor vehicle fuel, but the waiver would have to apply whenever competitively priced non-domestic biofuel is available in the Hawaii market, not merely at the director’s discretion.

In conclusion, it appears that the “locally produced biofuels” provision of S.D. 2 and the Proposed H.D. 1 would not withstand constitutional challenge, being facially discriminatory. Because the five percent minimum biofuel requirement is discriminatory and the (potentially) nondiscriminatory alternatives are not mandatory, we suggest that the “locally-produced” requirement of this bill be deleted.



**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 Committee on Energy and Environmental Protection**

Tuesday, March 19, 2013  
8:30 AM  
State Capitol, Conference Room 325

in consideration of  
**SB 15, SD 2, HD1 Proposed RELATING TO ENERGY.**

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

The Department of Business, Economic Development, and Tourism (DBEDT) offers comments on SB 15, SD 2, HD1 Proposed, which would: 1. Replace the existing ethanol mandate with a requirement that motor fuels contain at least 5% locally-produced biofuel; provided that for diesel fuel, no more than 5% of locally-produced biofuel shall be required; and 2. Replace the existing ethanol facility tax credit with a production tax credit for biofuels produced within the state.

We defer to the State Department of Taxation on tax issues and implementation, and to the Attorney General's Office on the constitutionality of the measure.

Among DBEDT's concerns are:

1. Both the requirement for locally-produced biofuel, and the tax credit for fuels produced within the state, appear to be in conflict with the commerce clause of the U.S. Constitution.

2. The additional financial and human resources to develop and administer this program are not covered under DBEDT's present budget, including the potentially significant legal service costs due to the commerce clause issue mentioned above.
3. We are concerned that there are several ambiguities in the bill which could lead to difficulties in accurately interpreting and implementing the will of the Legislature. For example:
  - a. For the mandate, what constitutes "locally produced?" Is dehydration or some type of final processing step sufficient for the biofuel to be considered "locally produced"? How would blends of locally-produced and imported products be viewed?
  - b. The processes to determine what could be considered to be "competitively priced" or "sufficient quantities" are not spelled-out in the bill.
  - c. For the tax credit, the applicability of the phrase "each taxpayer producing qualifying biofuels" (page 6, line 12) is unclear. Does it apply to facility owner(s), investor(s), operator(s), or others?
4. With the expansion of the mandate to diesel fuel distributors, such distributors could face additional costs or logistical issues related to fuel blending or compatibility of delivery trucks or barges with subsequent products.
5. Finally, we question the effectiveness of the proposed credit in influencing investment in biofuel facilities.

Thank you for the opportunity to offer these comments.



**Testimony of  
Gary M. Slovin / Mihoko E. Ito  
on behalf of  
The Alliance of Automobile Manufacturers**

DATE: March 16, 2013

TO: Representative Chris Lee  
Chair, Committee on Energy & Environmental Protection  
*EEPTestimony@capitol.hawaii.gov*

RE: **S.B. 15 S.D.2 – Proposed H.D.1--Relating to Energy  
Hearing Date: Tuesday, March 19, 2013 at 8:30 am  
Conference Room 325**

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Dear Chair Lee and Members of the Committee on Energy & Environmental Protection:

On behalf of the Alliance of Automobile Manufacturers (“Alliance”) we submit this testimony regarding S.B. 15 S.D. 2, proposed H.D.1. The Alliance is a trade association of twelve car and light truck manufacturers including BMW Group, Chrysler Group LLC, Ford Motor Company, General Motors Company, Jaguar Land Rover, Mazda, Mercedes-Benz USA, Mitsubishi Motors, Porsche, Toyota, Volkswagen Group of North America, and Volvo.

In its present form and the Proposed HD 1, SB 15 S.D. 2 proposed H.D.1 creates the potential for stopping the use of standard gas fueled motor vehicles in Hawaii. No other State, including California, is considering such legislation. The bill would create a non-standard fuel. Since manufacturers can not sell vehicles that are not shown by test to be able to run on commercially available fuels, the only way cars could be sold in Hawaii if the bill becomes law would be for manufacturers to develop vehicles to run on the Hawaii fuel that would be required by DBEDT pursuant to this bill. No one could realistically expect that to happen. The Alliance supports the development of biofuels, but that development must be based on scientific principles. The present bill is not so based. Whether Hawaii can set a standard that differs from the rest of the country is questionable, but the promotion of biofuels is not. This issue needs to be actually studied, with input from persons who know what it takes to make fuel and make cars that run. The Alliance can and is willing to help.

Thank you for the opportunity to testify on this bill.

---

Gary M. Slovin  
Mihoko E. Ito  
Tiffany N. Yajima  
Nicole A. Velasco

1099 Alakea Street, Suite 1400  
Honolulu, HI 96813  
(808) 539-0840

**HOUSE COMMITTEE ON  
ENERGY AND ENVIRONMENTAL PROTECTION**

March 19, 2013

Senate Bill 15, SD2, PROPOSED HD 1 Relating to Energy

Chair Lee and members of the House Committee on Energy and Environmental Protection, I am Rick Tsujimura, representing General Motors LLC (GM).

GM has concerns with and opposes Senate Bill 15, SD2, PROPOSED HD1 Relating to Energy. This measure as drafted would allow the director to specify biofuel percentages greater than five percent which would be problematic to some of the GM engines, particularly older models.

We suggest that the legislature consider establishing a working group to consider the biofuel issues during the interim.

Thank you for the opportunity to present this testimony.

**PACIFIC WEST ENERGY LLC**  
**1088 BISHOP STREET SUITE 1220**  
**HONOLULU, HI 96813**

March 17, 2013

Representative Chris Lee, Chair  
Representative Cynthia Thielen, Vice Chair  
And Members of the Committee on Energy and Environmental Protection

Representative Cliff Tsuji Chair  
Representative Gene Ward, Vice-Chair  
And Members of the Committee on Economic Development & Business

Hawaii State Capitol  
415 S. Beretania  
Honolulu, HI 96813

Re: SB15 SD2 HD1 Proposed – Relating to Energy

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

My name is William Maloney and I am the President and Chief Executive Officer of Pacific West Energy LLC (“PacWest”), who have been and are actively attempting to develop an integrated agriculture to green power and biofuel project in Hawaii for several years. I was intimately involved in the creation of the existing Ethanol Facility Investment Tax Credit and the rulemaking for the ethanol blending mandate. I am an internationally recognized expert in biofuels, and in addition to my activities with Pacific West Energy LLC, I provide consulting services primarily to biofuel producers and traders, and petroleum companies that blend biofuels.

SB15 SD2 HD1 Proposed intends to modify both the Ethanol Facility Investment Tax Credit (complete repeal) and the ethanol blending mandate, and while the amendments appear to be well intended, I submit this testimony in opposition to the bill, as it is currently crafted.

For background, PacWest continues to pursue a fuel ethanol production facility in Hawaii, integrated with a renewable energy biomass electricity cogeneration facility. The total project cost is currently estimated to be approximately \$80 million, with \$40 million of this representing the ethanol facility, and the company has permits in place. To date, we have expended over \$10 million and several years of effort in reliance on the Hawaii Ethanol Facility Tax Credit.

I set forth below our specific comments and major concerns and/or objections to SB15 SD2 HD1 as it is currently drafted:

- 1) The original intent of the bill appears to be to create a blending mandate for biodiesel, only if it is produced in Hawaii, in the State’s diesel fuel market. The bill would accomplish this by removing the existing 10% ethanol blending mandate, and combining all biofuels and then imposing a lower 5% overall mandate level. A further purpose appears to possibly be to create a market for drop-in biofuels in either gasoline or diesel – if and when technologies are proven and these biofuels are commercially available (they are neither today).

Biofuels are not the same, and while we support the adoption of a 5% biodiesel blending mandate, this should not be by reducing the 10% ethanol blending mandate, and consolidating biofuels into a single mandate, but by creating a simple new stand-alone chapter in the statutes that mirrors the ethanol mandate language, but for biodiesel at a 5% level. The bill, as currently crafted, creates an unnecessary and essentially unworkable convoluted and confusing generic biofuels mandate from the straightforward and simple 10% ethanol mandate that has successfully resulted in the blending of ethanol in gasoline – but only when it costs less than gasoline, which has been the case since the inception of the ethanol blending mandate.<sup>1</sup>

- 2) The adoption of a blending mandate, whether for ethanol, biodiesel, or any biofuel, that establishes a preference for in-state producers is unconstitutional, a violation of the Commerce Clause, as any statute that purposefully discriminates against out-of-state interests is *per se* invalid. Even in the absence of proof of purposeful discrimination, the statute will be presumed invalid if the purpose of the statute is legitimate but the means or effects are discriminatory.<sup>2</sup> So, if enacted with the in-state preference, the biofuels mandate would be invalid.
- 3) The proposed new Biofuels Production Tax Credit includes in Part II of the bill a repeal of the existing Ethanol Facility Tax Credit. We strenuously oppose this. The Ethanol Facility Tax Credit was enacted only after two independent cost-benefit analysis that required the submission of all detailed project budgets and federal and state tax implications. Both concluded that the Ethanol Facility Tax Credit would be revenue positive for the State of Hawaii. To the best of our knowledge no such examination has been undertaken for biodiesel production facilities. We believe such an examination for all biofuels is essential to good policy, and respectfully request the committees impose the same requirements on all biofuels that had been imposed on prospective ethanol producers before creating expensive incentives.
- 4) The proposed Biofuels Production Tax Credit is clearly, and unnecessarily, designed to discriminate against ethanol as a biofuel, in favor of biodiesel. This discrimination results from the inclusion of a two tier energy content standard determining the level of eligible tax credit. While on the surface this may appear to make sense, a deeper understanding of ethanol and biodiesel reveals that such a differentiation, is unwarranted, and if there were to be a difference, it should be in favor of ethanol rather than biodiesel, as: a) ethanol, though of lower energy content per gallon, requires much larger capital investment per gallon of finished product and yields more energy per acre of crop cultivated; b) provides valuable octane enhancement in addition to petroleum displacement and; c) does not enjoy the \$1.00 per gallon federal tax credits that biodiesel enjoys (unlike biodiesel,

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<sup>1</sup> One of the primary intents of the 10% ethanol mandate was to create competition in the gasoline market, as prior to the mandate the refiners in Hawaii refused to produce a base gasoline that was suitable for ethanol blending, thereby restraining competition from independent gasoline marketers in Hawaii, who were blocked from blending the lower-cost ethanol in gasoline. The mandate has been very successful in this respect.

<sup>2</sup> Richard B. Collins, *Economic Union As a Constitutional Value*, 63 N.Y.U. L. Rev. 43, 61-62 (1988); see *Hughes v. Okla.*, 441 U.S. 322, 336-37 (1979) (holding that laws that categorically discriminate against interstate commerce are presumptively invalid).

ethanol blending requires no federal tax credits to be competitively priced with gasoline). Discriminating against ethanol in favor of biodiesel creates an uneven playing field, and will likely result in prospective biodiesel producers being given an unfair advantage in acquiring agricultural lands or feedstocks from agricultural producers (as well as a financial windfall relative to their actual capital investment, which may have already been made).

- 5) It is evident that since the inception of the Ethanol Facility Tax Credit there has been a loss of institutional memory at the legislature regarding the issues relating to biofuel related incentives. Part II, the Biofuels Production Tax Credit, is also unconstitutional as it blatantly violates the Commerce Clause. Again, any statute that purposefully discriminates against out-of-state interests is *per se* invalid and even in the absence of proof of purposeful discrimination, the statute will be presumed invalid if the purpose of the statute is legitimate but the means or effects are discriminatory. This issue arose prior to the creation of the Ethanol Facility Tax Credit, with reference being made to two specific cases of particular relevance, *New Energy Co. of Ind. v. Limbach* and *Bacchus Imports Ltd. v. Dias*, that we refer you to. The existing statute was carefully written in consultation with the Hawaii Attorney General and Department of Taxation to conform to the Commerce Clause to specifically create an investment tax credit and not a production tax credit, or direct production and sale related tax credit, and also not a tax credit that creates any discrimination against out-of-state interests (which SB15 SD2 HD1 Proposed clearly does, both through its feedstock restriction and the production and local sale components of the tax credit).

The Committees should seek the advice of the State Attorney General before proceeding to enact legislation that is invalid, and will likely lead to costly litigation.

We suggest that an appropriate solution to the tax credit issue would be to modify the existing ethanol facility tax credit to be a biofuel facility tax credit, primarily by substituting the word biofuel for ethanol through the statute. This would provide an investment tax credit to any biofuel producer, be it ethanol, biodiesel, renewable diesel, or any drop-in fuel. This simpler approach would not create unnecessary two-tiered credit, avoid additional confusion, discrimination, and not enact an unconstitutional production tax credit that serves neither investor's or the State's interests.

We have included language that we believe would accomplish the enactment of a 5% biodiesel or renewable diesel mandate, and a modification to the existing Ethanol Facility Tax Credit that would cover all biofuels.

We thank you for this opportunity to testify.

Sincerely,

By /s/ William M. Maloney  
William Maloney  
President & Chief Executive Office  
Pacific West Energy LLC

## **Proposed Language for New Chapter to Adopt 5% Biodiesel Blending Requirement**

**§486J- Biodiesel content requirement.** (a) The director shall adopt rules in accordance with chapter 91 to require that diesel sold in the State for use in motor vehicles contain five per cent biodiesel, including renewable diesel, meeting the relevant ASTM International standards, by volume. The amounts of biodiesel sold in the State containing five per cent biodiesel shall be in accordance with rules as the director may deem appropriate. The director may authorize the sale of diesel that does not meet these requirements as provided in subsection (a).

(a) The director may authorize the sale of diesel that does not meet the provisions of this section:

(1) To the extent that sufficient quantities of competitively-priced biodiesel are not available to meet the minimum requirements of this section; or

(2) In the event of any other circumstances for which the director determines compliance with this section would cause undue hardship.

(b) Each distributor, at reporting dates as the director may establish, shall file with the director, on forms prescribed, prepared, and furnished by the director, a certified statement showing:

(1) The price and amount of biodiesel available;

(2) The amount of biodiesel-blended fuel sold by the distributor;

(3) The amount of non-biodiesel-blended diesel sold by the distributor; and

(4) Any other information the director shall require for the purposes of compliance with this section.

(c) Provisions with respect to confidentiality of information shall be the same as provided in section 486J-6.

(g) Any distributor or any other person violating the requirements of this section shall be subject to a fine of not less than \$2 per gallon of nonconforming fuel, up to a maximum of \$10,000 per infraction.

(h) The director, in accordance with chapter 91, shall adopt rules for the administration and enforcement of this section.

Proposed Amendments to Ethanol Facility Tax Credit to Encompass All Biofuels

**§235-110.3 BiofuelEthanol 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 ~~an~~ ~~biofuel~~~~ethanol~~ 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 ~~biofuel~~~~ethanol~~ production facility, the annual dollar amount of the ~~biofuel~~~~ethanol~~ 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. A taxpayer may claim this credit for each qualifying ethanol facility; provided that:

(1) The claim for this credit by any taxpayer of a qualifying ~~biofuel~~~~ethanol~~ production facility shall not exceed one hundred per cent of the total of all investments made by the taxpayer in the qualifying ~~biofuel~~~~ethanol~~ production facility during the credit period;

(2) The qualifying ~~biofuel~~~~ethanol~~ 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~~~~ethanol~~ production facility is in production on or before January 1, 2017; and

(4) 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:

"Credit period" means a maximum period of eight years beginning from the first taxable year in which the qualifying ~~biofuel~~~~ethanol~~ 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 qualifying ethanol 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 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 ~~biofuel~~ ethanol production facility's production design capacity, in gallons of ~~ASTM specification motor fuel grade~~ ~~biofuel~~ ethanol per year.

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

~~"Qualifying ethanol production"~~ "Qualifying ~~biofuel~~ ethanol production" means ~~biofuel~~ ethanol produced in Hawaii from renewable, organic feedstocks, ~~including biomass crops; agricultural residues and byproducts; 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 or waste materials, including municipal solid waste, including:~~

- (1) Methanol, ethanol, or other alcohols;
- (2) Biodiesel or renewable diesel; and
- (3) Renewable jet fuel or renewable gasoline.-

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.

~~"Qualifying ethanol production facility" or "facility" means a facility located in Hawaii which produces biofuel motor fuel grade ethanol meeting the latest minimum relevant specifications by the American Society of Testing and Materials, standard D-4806, as amended.~~

(c) In the case of a taxable year in which the cumulative claims for the credit by the taxpayer of a qualifying ethanol production facility exceeds the cumulative investment made in the qualifying ethanol 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

(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.

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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 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 [biofuel ethanol](#) 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.~~

(gh) Prior to construction of any new qualifying [biofuel ethanol](#) production facility, the taxpayer shall provide written notice of the taxpayer's intention to begin construction of a qualifying ethanol 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.

(~~hi~~) 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 ~~biofuel ethanol fuel~~ 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.

(~~ij~~) If a qualifying ~~biofuel 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.

(~~jk~~) 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 ~~biofuel ethanol~~ produced and sold during the previous calendar year, how much was sold in Hawaii versus overseas, feedstocks used for ~~biofuel ethanol~~ production, the number of employees of the facility, and the projected number of gallons of ~~biofuel ethanol~~ production for the succeeding year.

(~~kl~~) In the case of a partnership, S corporation, estate, or trust, the tax credit allowable is for every qualifying ~~biofuel ethanol~~ 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).

~~(lm)~~ 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 ~~biofuel ethanol~~. The report shall include:

(1) The number, location, and nameplate capacities of qualifying ~~biofuel ethanol~~ production facilities in the State;

(2) The total number of gallons of ~~biofuel ethanol~~ produced and sold during the previous year; and

(3) The projected number of gallons of ~~biofuel ethanol~~ production for the succeeding year.

(~~mn~~) 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 claim for credit made under this section and may adopt rules necessary to effectuate the purposes of this section pursuant to chapter 91. [L 2000, c 289, §2; am L 2004, c 140, §2; am L 2007, c 128, §1]



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James Takamine, Chair  
Hawaii Community Federal Credit Union

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PGV/ORMAT

David Honma, Treasurer  
First Hawaiian Bank

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KTA Super Stores

Bill Walter, Director  
W.H. Shipman, Ltd.

Jacqui Hoover, COO  
Executive Director

17 March 2013

Testimony in Support of SB 15, HD 1  
Tuesday, 19 March 2013  
8:30 a.m. – State Capitol Conference Room 325

Committees on  
Energy & Environmental Protection  
And  
Economic Development & Business

Aloha Chairs Lee and Tsuji, Vice Chairs Thielen and Ward,  
and Members of the House Committee Energy & Environmental  
Protection and Economic Development & Business:

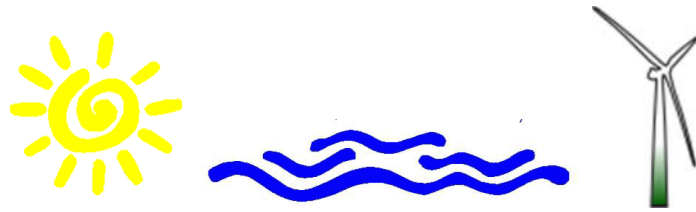
On behalf of Hawaii Island Economic Development Board (HIEDB), a member based, private non-profit 501(c)3 incorporated in 1984 that is committed to strengthening and diversifying Hawaii Island's economy in balance with the diverse and unique resources of our island home and always respectful of our native culture.

Senate Bill 15, House Draft 1 expands the ethanol fuel mandate to include other biofuels and also provides for a biofuel production tax credit. HIEDB supports both of these initiatives which will benefit and support Hawaii's efforts to ensure energy self-sufficiency and security. We humbly request that SB 15, HD1 be approved.

Mahalo for this opportunity to speak on this matter.

Sincerely,

Jacqui Hoover  
Executive Director & COO



## LIFE OF THE LAND

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### COMMITTEE ON ENERGY & ENVIRONMENTAL PROTECTION

Rep. Chris Lee, Chair

Rep. Cynthia Thielen, Vice Chair

### COMMITTEE ON ECONOMIC DEVELOPMENT & BUSINESS

Rep. Clift Tsuji, Chair

Rep. Gene Ward, Vice Chair

DATE: Tuesday, March 19, 2013

TIME: 8:30 AM

PLACE: Conference Room 325

Re SB 15 SD2 RELATING TO PUBLIC UTILITIES

**SUPPORT**

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

My name is Henry Curtis and I am the Executive Director of Life of the Land, Hawai`i's own energy, environmental and community action group advocating for the people and `aina for four decades. Our mission is to preserve and protect the life of the land through sound energy and land use policies and to promote open government through research, education, advocacy and, when necessary, litigation.

SB 15 would change the ethanol requirement to a biofuel (ethanol and biodiesel) requirement.

#### Renewable energy can

- \* have high or low costs
- \* have minimal or intrusive environmental and cultural impacts
- \* increases or decreases greenhouse gas emissions

#### Biofuel producers can be

- \* responsible and concerned about sustainability
- \* seeking to maximize profits by cutting corners

At some point Hawai`i needs to go beyond the buzz words "clean" and "renewable" and delve into establishing Hawai`i policy preferences within the broad class of renewable energy resources

# TAXBILLSERVICE

126 Queen Street, Suite 304

TAX FOUNDATION OF HAWAII

Honolulu, Hawaii 96813 Tel. 536-4587

SUBJECT: INCOME, Biofuel production tax credit

BILL NUMBER: SB 15, Proposed HD-1

INTRODUCED BY: Senate Committees on Energy and Environmental Protection and Economic Development and Business

**BRIEF SUMMARY:** Adds a new section to HRS chapter 235 to establish a biofuel production tax credit. The credit may only be claimed for a five-year period and provides that the annual dollar amount of the tax credit shall be equal to: (1) 30 cents per gallon of biofuel produced and sold for use in the state for biofuels with an energy content equal to or above one hundred fourteen thousand British thermal units (BTU) per gallon; or (2) 20 cents per gallon of biofuel produced and sold for use in the state for biofuels with an energy content below one hundred fourteen thousand BTUs of biofuel per year; provided that the amount of the tax credit claimed by a taxpayer shall not exceed \$3,000,000 per taxable year.

Delineates verification, qualification and certification provisions of the department of business, economic development, and tourism (DBEDT) which shall be complied with by a taxpayer to claim the credit. Prior to production of any qualifying biofuels for the year, the taxpayer shall provide written notice of the taxpayer's intention to begin production of qualifying biofuels. The information shall be provided to DBEDT. If in any year, the annual amount of certified credits reaches \$12,000,000 in the aggregate, DBEDT shall discontinue certifying credits and notify the department of taxation. Limits the total amount of certified credits to \$12,000,000 per year.

Credits in excess of tax liability may be used as a credit against the taxpayer's income tax liability in subsequent years until exhausted. 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.

Requires the taxpayer to provide written notice to the director of taxation and DBEDT within 30 days following the start of production. The notice shall include the production start date and expected biofuels production for the next 12 months. Notwithstanding any other law to the contrary, this information shall be available for public inspection and dissemination under chapter 92F.

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

Following each year in which the biofuel production tax credit has been claimed, the director of DBEDT is to submit a written report to the governor and legislature regarding the production and sale of biofuels.

Defines “biofuels” as liquid fuels produced within the state from renewable feedstocks transported less than one thousand miles from point of origin to the production facility located within the state, including: (1) methanol, ethanol, or other alcohols; (2) biodiesel or renewable diesel; and (3) renewable jet fuel or renewable gasoline.

Further defines “credit period,” “net income tax liability” and “renewable feedstocks” for purposes of the measure.

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

Makes nontax amendments relating to the ethanol/biofuel content in liquid fuels used in motor vehicles.

EFFECTIVE DATE: Tax years beginning after December 31, 2013

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 biofuel 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 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 goes 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 purpose revenue bonds for this purpose or perhaps even a specific appropriation of taxpayer dollars. At least lawmakers would have a better idea of what is being funded and hold the developers of these alternate forms of energy to a deliberate timetable or else lose the funds altogether. A direct appropriation would be preferable to a tax credit as it would provide some accountability for the taxpayers' funds being utilized to support this effort.

This proposal validates 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.

Again, lawmakers need to stop and think of all of these business-targeted tax credits as an expenditure of tax dollars. Advocates seem to believe that unless someone claims the credit that nothing is lost and that everything is to be gained if, indeed, a taxpayer claims the credit. Ah, but that is the catch, if the credit is claimed, is the qualifying activity necessarily what lawmakers had intended the credit to achieve? If not, then it is a crap shoot, the project or activity may or may not be successful as envisioned. But then who is held accountable for the failure? Take for example the high technology investment tax credit which was envisioned to create a cadre of high paying jobs in the high technology industry, jobs that would keep or attract Hawaii's youth back home. However, with no requirement to report the number of jobs created or the amount of payroll resulting or the level of that compensation, there is no way to validate the success or failure of the high technology investment tax credit. Further, of those investors who took advantage of the credit, there is no evidence of the number of businesses created nor a record of those who sustained their presence in Hawaii. So for more than a billion dollars expended by way of the high technology investment tax credit, there is little evidence of a high technology industry in Hawaii.

Lawmakers should also remember that the impetus for the original proposal, that is a tax credit for ethanol production in a then ethanol facility was to create a demand and lifeline for Hawaii's sugar industry in addition to creating a source of alternate fuel. Now that it appears there is no longer a focus on ethanol but an entire host of alternate fuels made from biomass sources, it might be more prudent to allow the development of biofuels to be driven by the market demand and where institutions are already devoted to the exploration of such alternate fuels. Once the technology is developed, lawmakers can then evaluate how best to support that technology to be established in Hawaii. Again, offering tax credits so that taxpayers will undertake the intended activity or goal is an irresponsible use of hard-earned taxpayer dollars. With that said, taxpayers, as well as lawmakers, need to ask how those lost tax revenues could have been spent on proven programs that, for example, prepare tomorrow's workforce to fill the positions that employers need or to prepare children to enter the formal education system or to provide the support services for those on the welfare rolls. To spend tax dollars with no indication of a promise of success is like awarding a construction contract with no idea of the track record of the contractor or the contractor's ability to perform the work. Doing so would be viewed by taxpayers as scandalous.

Digested 3/18/13



**SB 15 SD2 - Proposed HD1**

**RELATING TO ENERGY**

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

**March 19, 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 SB 15 SD2 Proposed HD1, "Relating to Energy."

**SUMMARY**

Hawaii BioEnergy, LLC ("HBE") does not wish to take a position on SB 15 SD2, which changes the existing gasoline requirement of ten percent ethanol fuel content to a requirement that each distributor who sells liquid fuels in the State for use in motor vehicles shall ensure that locally-produced biofuels account for at least five percent of the distributor's annual sales. However, HBE would like to express the company's support for the Proposed HD1 amendment, which establishes a Biofuels Production Income Tax Credit, in place of the Ethanol Facility Credit, which would apply to various types of renewable fuel, with production and minimum required capacity to be measured in British Thermal Units (BTU). While the Ethanol Facility Credit was intended to jumpstart the local ethanol industry, it hasn't done so due to a number of factors. However, 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.

Including 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. 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.

While HBE supports Proposed HD1, the company proposes to amend the proposed language by:

- Requiring that, if available, the majority of feedstock used in production is locally sourced;
- Applying the Biofuels Production Income Tax Credit to new construction; and
- Applying the credit to taxable years beginning January 1, 2014.

## **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.

Including a local feedstock provision, which would require that the majority of feedstock used in biofuel production be locally sourced if and when available, 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 the Proposed HD1, the company believes that the language could be strengthened by applying the Biofuels Production Income Tax Credit to new construction and applying the tax credit to taxable years beginning in January 1, 2014. These amendments would help to attract new, needed investment into the state's agricultural and bioenergy sectors while not needlessly 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 Biofuels Production Tax Credit, help to reduce total project costs and associated risks, making project more attractive to outside investors and financing institutions. The Proposed HD1 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 the Proposed HD1, with amendments.

Thank you for the opportunity to testify.



**Directors**

Jody Allione  
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 COMMITTEE ON ENERGY AND ENVIRONMENTAL  
PROTECTION

SB 15 SD2 Proposed HD1, RELATING TO ENERGY

March 19, 2013

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 SB 15 SD2 Proposed HD1 are to: (i) change existing gasoline requirement of ten per cent ethanol fuel content to a requirement that each distributor who sells liquid fuels in the State for use in motor vehicles shall ensure that locally-produced biofuels account for at least five per cent of the distributor's annual sales of liquid fuels for motor vehicles by volume; provided that for diesel fuel, no more than five per cent of locally-produced biofuel shall be required, (ii) establish a Biofuels Production Income Tax Credit, effective for taxable years beginning after December 31, 2013, and (iii) repeals Ethanol Facility Tax Credit.

HREA **supports** this measure and offers the following comments in support:

- 1) Biofuel Mandate. It appears that the E-10 mandate would now become a B-5 (Biofuel-5) maintain. While we would prefer a B-20 to place us further down the path to our state's clean energy goals, we can support the B-5 as a first step to expanding our use of biofuels in Hawaii
- 2) Biofuels Production Tax Credit The proposed production tax credit ("PTC") is potentially the best way to encourage new biofuel production in Hawaii. The approach in many respects mirrors the proposals in SB 623 or utility-scale solar-electric projects. Specifically, in both cases a "producer" gets paid when he actually produces. In the case of solar-electric projects, the payment is \_\_\_ cents/kWh; in the case of the proposed biofuels PTC, the proposed payment is 30 cents/115,000 BTU. Note the energy content of a gallon of gasoline is about 115,000 BTU ("British Thermal Units"). Moreover , there are other features of the PTC 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;
  - b) the PTC will help encourage the production of local biofuels, through the facilitation of effective producer-ag grower relationships; and
  - c) this measure will help move us past our “sluggish” start in the fuels part of the Hawaii Clean Energy Initiative.
- 3) Recommendations. In summary, please pass this measure out and help us move forward to our biofuel future.

Mahalo for this opportunity to testify.



## Pacific Biodiesel Technologies

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March 18, 2013

Representative Chris Lee, Chair  
Representative Cynthia Thielen, Vice Chair  
Committee on Energy and Environmental Protection

Representative Clift Tsuji, Chair  
Representative Gene Ward, Vice Chair  
Committee on Economic Development & Business

HEARING: Tuesday, March 19, 2013, 8:30am, Conference room 325

**Re: In support of Senate Bill 15, Proposed House Draft 1, Relating to Energy**

Dear Committee Chairs, Vice Chairs and Members,

Pacific Biodiesel Technologies (PBT) supports Senate Bill 15, House Draft 1 which requires that biofuels, rather than specifically just ethanol, account for five percent of all liquid transportation fuel sales in the State of Hawai'i. We concur that, despite several planned ethanol plants and an abundance of vacant sugar land, no ethanol production plants have been built, and we appreciate the broader support for all biofuels, allowing for consumer choice and the best technologies to emerge.

As a pioneering leader in the biodiesel industry, PBT has for over a decade been designing and operating community-based biodiesel processing facilities to produce high quality fuel for our customers and distributors. Since 1996, PBT has successfully operated biodiesel production plants in this state -- first on Maui, then on Oahu and most recently on Hawaii Island. Big Island Biodiesel (BIB) is PBT's most technologically advanced facility to date, offering zero waste, multi-feedstock processing and fuel distillation resulting in the country's highest quality premium biodiesel. This latest investment was built with local equity, debt service, and our faith in the State's commitment to the Hawai'i Clean Energy Initiative. We deeply appreciate the support reflected in House Draft 1 of Senate Bill 15 which we believe will lead to biofuels production expansion that otherwise would not happen.

Two of the most important actions the Legislature can take to incentivize the renewable fuels industry are to **expand the current ethanol mandate and the current ethanol facility tax credit to include other biofuels**. This will allow for consumer/distributor choice and ultimately for the most efficient fuel technologies to emerge. With local biodiesel production capacity now equal to about 10% of the transportation diesel usage in the state, including biodiesel in the mandate will support current and future jobs as well as the future energy security of our island communities.

The Hawai'i biodiesel production in-state capacity currently surpasses six million gallons a year and PBT is now managing more than 50 employees statewide. Our testimony today represents the management and staff of these taxpaying residents and the families who rely on their income, 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. It is



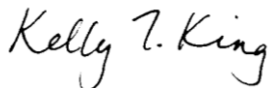
the hope of all of us that SB15 will advance in its proposed form and be a catalyst for significant expansion of the biofuel industry in Hawai`i as well as the diversified agriculture that will add jobs, keep open space and help develop the food and fuel security that so many of our state officials and community leaders have promised to support. 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 also like to encourage the joint committees to clarify Section 2 (b) so as to specify who “the director” is and also to note that the definition of “competitively priced” should include consideration for the benefits of locally produced fuel. Please note that while virtually all public officials who talk about the need for renewable energy never fail to mention the amount of tax dollars exported from Hawai`i for imported fuels, rarely is there allowance for the local revenue and jobs benefits of locally produced biofuels. While the cost of a gallon of petroleum may vary from day to day and week to week, biodiesel prices have remained steady and have *always* represented a higher local revenue percentage than imported petroleum.

To clarify this issue, we offer the following amendment to Section 2 (b) (1):

(1) To the extent that sufficient quantities of biofuel are not available to meet the minimum requirements of this section and/or that, considering other benefits to the State of Hawai`i (i.e. revenue, local jobs, environmental benefits, etc.), pricing is still deemed to be uncompetitive;

With the most recent proposed amendments, SB15 is now an encouraging vehicle that supports Hawai`i’s already established, “*boots-on-the-ground,*” commercial biofuels companies which are creating local jobs now and which serve as an important revenue source for the State. As Pacific Biodiesel ponders the opportunities before us now, this mandate would send a clear message that the best ones are right here at home in Hawaii. We humbly ask you to pass SB15, HD1.

Sincerely,



Kelly King, Vice President  
(808) 283-1954

Samuel W. Millington, CEO  
(808) 446-4690



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

March 18, 2013

**TESTIMONY ON SB 15 Proposed HD1, REATING TO ENERGY SUPPORT**

Representative Chris Lee, Chair, Committee on Energy & Environmental Protection  
Representative Cynthia Thielen, Vice Chair, Committee on Energy & Environmental Protection

Representative Clift Tsuji, Chair, Committee on Economic Development & Business  
Representative Gene Ward, Vice Chair, Committee on Economic Development & Business

**Hearing March 19, 2013 at 8:30am, House Conference Room 325**

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

As employees of Big Island Biodiesel, an affiliate of Pacific Biodiesel, we would like thank you for including both the Biofuels Mandate and the Biofuels Production Tax Credit in House Draft 1 of Senate Bill 15 for the consideration of your committees. Your support for a cleaner and greener future for Hawaii has not gone unnoticed. We wholeheartedly testify in favor of SB15, HD1.

This bill supports biofuels that can be made locally, such as biodiesel. If SB15, HD1 is passed, it will be one of the most important actions the Legislature can take to incentivize the renewable fuels industry. This will allow for consumer/distributor choice and ultimately for the best technologies to emerge. With local biodiesel production capacity now equal to about 10% of the transportation diesel usage in the state, this bill would support current and future jobs as well as the future energy security of our island communities.

With Big Island Biodiesel in commissioning phase for production of biodiesel, we know that passing this bill would ensure that our high quality local jobs remain secure and that we can continue to proudly provide the State with a cleaner, safer fuel alternative that is much better for our economy and our environment than imported petroleum fuels.

As Big Island Biodiesel continues to ramp up, SB15, HD1 is a message that our efforts are appreciated and encouraged by the State of Hawai'i.

We ask you to please pass SB15, HD1.

Mahalo,

Hawai'i Island Employees of Big Island Biodiesel and Pacific Biodiesel

Joseph Neil Kaspuler  
Kelaime, Aulima  
Robert Rulowen  
[Other illegible signatures]



## Western States Petroleum Association

House Committee on Energy & Environmental Protection

DATE: Tuesday, March 19, 2013  
TIME: 8:30 AM  
PLACE: Conference Room 325  
RE: SB 15, SD2 (proposed draft), Relating to Energy

I am Melissa Pavlicek, testifying in **opposition to SB 15, SD2** and the posted proposed House Draft on behalf of the Western States Petroleum Association (known as WSPA). WSPA is a non-profit trade association representing a broad spectrum of petroleum industry companies in Hawaii and five other western states.

The purpose of SB 15, SD 2 is to broaden the existing ethanol blending mandate to require all motor vehicle liquid fuels sold in the state to contain at least 5% locally produced biofuels. Although this opens the door to a broader suite of biofuels use in the state, and potentially lowers the limit on the amount of ethanol required to be blended into gasoline, it also expands the mandate to include a diesel/biodiesel requirement. Further, it creates a "start/stop" regulatory scheme under which the blending mandate could be suspended if locally produced biofuels are not available in sufficient quantities and are not competitively priced, or if undue hardship is experienced. The proposed draft brings together many problematic provisions.

This bill overlooks the fundamental relationship between vehicles, fuels and consumers. Each of these key elements must be considered carefully when making adjustments that have the potential to negatively impact or be impacted by the others. This bill makes changes to regulations to fuels only and does so without the benefit of public workshops or extensive commentary unlike the more deliberative process used to enact the ethanol-blending mandate.

The law requiring a 10% blend ethanol blend for motor gasoline was adopted into statute to promote the agriculture industry nearly 20 years ago. Subsequently, the administrative rules requiring 85% of all motor gasoline distributed in Hawaii contain 10% ethanol (E10) was adopted by DBEDT in 2004. Allowing for an 18-month transition period, E10 started in April 2006. The adoption of blending rules was opposed by members of the petroleum industry on the basis that mandates distort markets, the addition of ethanol was unnecessary in Hawaii for cleaner combustion, and other consumer impacts. More importantly, the industry noted the significant cost to comply with a mandate and warned against a "start/stop" reaction if the questionable economic benefits including renewed agricultural activity and job creation were not realized.

In deciding whether or not to modify Hawaii's ethanol blending mandate, the Legislature should also be aware of that Hawaii opted into the Federal Renewable Fuels Standard (RFS) program that sets quotas via a formula for refiners and importers of gasoline to blend a percentage of biofuels into the finished products they distribute (40 CFR § 80.1143 of the Federal RFS program.) Congress has since adopted an RFS2 program, which requires that 36 billion gallons of alternative fuels be

blended into transportation fuel by 2020. These requirements raise the renewable fuel blending requirements for refiners and importers.

Passage of SB 15, SD2 would modify the E10 mandate, however, it is unclear whether other biofuels would be compatible with existing gasoline production, distribution or utilization infrastructure and whether therefore they would ever be actually implemented with respect to gasoline.

Even more perplexing is the attempt to introduce a biofuels mandate of 5 percent on other liquid vehicle motor fuels (e.g. diesel) in addition to the gasoline biofuel mandate.

WSPA is concerned that a mandatory introduction of biodiesel may potentially affect fuel quality, mobilize contaminants in the fuel system, or increase the potential for microbial contamination of Hawaii diesel supplies. These performance issues are outside of the scope of Underwriters Laboratories Inc. standards and certification.

Additionally, there are currently several concerns with the introduction of biodiesel in California that are being further evaluated. These concerns include increased nitrogen oxide (NO<sub>x</sub>) emissions from biodiesel that can lead to increased ozone pollution, increased CO<sub>2</sub> emissions, and high aquatic toxicity. There is debate about the magnitude of any NO<sub>x</sub> emission increases, as it may be a function of not only biodiesel concentration but also engine type and duty cycle.

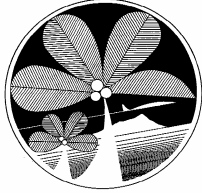
Finally, the proposed House Draft version of SB 15 requires distributors to “ensure” locally-produced biofuels is used to meet the bill’s biodiesel (and gasoline) mandate and at the same time allows the DBEDT director to suspend the rules if such locally produced biofuels are unavailable in sufficient quantities at a competitive price, or if they create undue hardship. The stop/start nature of this new regulatory scheme is truly the worst of all worlds in terms of predictability and business certainty.

Furthermore, WSPA believes that inserting a “locally produced” component into this legislation raises the issue of a possible legal challenge, including but not limited to a challenge based on the Commerce Clause of the United States Constitution. Even if the concept of local “production” for biofuels were somehow justified, we note that there is no assurance that the feedstock used in such production will be grown in Hawaii and every reason to believe that the feedstock itself would have to be imported.

We strongly support flexibility and the maintenance of all options to meet Hawaii’s growing energy needs. However, we are concerned that SB15, SD2 and the proposed House Draft will create unintended consequences for fuel supplies and consumers.

Thank you for giving WSPA the opportunity to testify today.

## AIRLINES COMMITTEE OF HAWAII



Honolulu International Airport  
300 Rodgers Blvd., #62  
Honolulu, Hawaii 96819-1832  
Phone (808) 838-0011  
Fax (808) 838-0231

March 19, 2013

Honorable Chris Lee, Chair  
Honorable Cynthia Thielen, Vice Chair  
House Committee on Energy & Environmental Protection

**Re: SB 15 SD2 Proposed HD1 – Relating to Energy – Comments expressing Concerns**  
Conference Room 325– 8:30 AM

Aloha Chair Lee, Vice Chair Thielen, and Members of the Committee:

The Airlines Committee of Hawaii\* (ACH), which is made up of 21 signatory air carriers that underwrite the State Airport System appreciates the opportunity to comment on SB 15 SD2, Relating to energy.

This bill proposes a change to the existing 10 percent ethanol fuel content requirement to a new five percent content requirement of locally-produced biofuels for motor vehicles by volume.

While the ACH supports the legislative intent to protect Hawaii's environment, to reduce the state's dependence on petroleum, and to provide support for locally-produced biofuels, we want to raise the critical infrastructure concerns that are associated with cross-contamination of biofuels with jet fuel supplies in Hawaii.

"FAME" (fatty acid methyl ester) fuels are manufactured from bio-mass and have properties that are similar to petroleum diesel. FAME fuel is a good fuel for road transportation means but is not appropriate for air transport, due to a lower energy content and a higher freezing point.

FAME is a liquid that clings to the surfaces with which it comes in contact. It leaves a residue that risks contaminating any fuels or oils that follow it in the pipelines. The remedies for contamination of pipelines, storage tanks, barges and the fuel-flow appurtenances (e.g., pipes, pumps, filtration equipment) are drastic. The affected equipment would be taken out of service and extensively decontaminated. It would remain out of service until testing affirms that it is safe to redeploy.

Taking the complex and very limited pipelines, tanks, and other equipment out of service to be cleaned would cause a substantial, costly and entirely preventable burden on the entire state fuel-supply infrastructure.

Airports, in particular, are vulnerable to FAME-related problems due to limited storage capacity and aircraft engine susceptibility. Fuel storage at commercial airports, and some military installations, is limited, with no redundancies. At any given time, each jet fuel storage tank is either receiving fuel, kept static while any solid or water components are allowed to settle out and be removed, or dispensing to fueling equipment and the flight line. Removal of tankage would likely leave the airport short of fuel for days or even weeks. Additionally, FAME contamination of the holds of fuel transport barges would require quarantine of that barge – and the pumps and pipes on-shore and aboard ship – from future jet fuel shipments until it has all been replaced or cleaned.

The Honolulu International Airport is the fourth largest U.S. gateway and each of the other 14 state-operated airports serve as critical gateways for travel and commerce into and out of the state. Therefore, we urge taking a cautious approach before proceeding with this initiative.

The ACH is willing to work with the legislature to discuss alternatives to assist the state in its initiative to promote biodiesel usage, but respectfully urges your committee to ensure that neither aircraft safety nor airport jet fuel supply is compromised.

Sincerely,

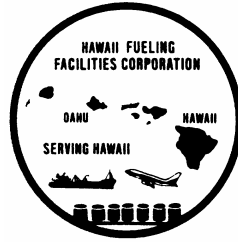
Blaine Miyasato  
ACH Co-chair

Matthew Shelby  
ACH Co-chair

*\*ACH members are Air Canada, Air New Zealand, Air Pacific, Alaska Airlines, All Nippon Airways, Aloha Air Cargo, American Airlines, China Airlines, Delta Air Lines, Federal Express, go!, Hawaiian Airlines, Island Air, Japan Airlines, Korean Air, Philippine Airlines, Qantas Airways, United Airlines, United Parcel Service, US Airways, and Westjet.*

# HAWAII FUELING FACILITIES CORPORATION

**JACK SCHIRMER**  
President



**JEFF CUMPATA**  
Vice President

March 19, 2013

The Honorable Chris Lee, Chair  
The Honorable Cynthia Thielen, Vice Chair  
Members of the House Committee on Energy & Environmental Protection

**Subject: Submitting for consideration testimony expressing concerns on SB15 SD2  
Proposed HD1 - Relating to Energy  
Hawaii State Capitol; conference room 325; 8:30 AM**

Aloha Chair Lee, Vice Chair Thielen and Members of the Committee:

Hawaii Fueling Facilities Corporation (HFFC) is a Consortium of 19 commercial airlines that own, maintain and operate the jet fuel storage and distribution systems at the Honolulu, Kona, and Hilo International Airports. HFFC has also obtained a lease from the State of Hawaii, Department of Transportation-Airports Division, to construct a new jet fuel storage and distribution system at the Kahului Airport in Maui.

HFFC appreciates the opportunity to express comments regarding proposed SB15, which broadens the existing ethanol blending requirement in gasoline to allow other types of biofuels to be used. While we support the intent of the bill to diversify to renewable energy sources, we are concerned about the possible risk of contamination of aviation jet fuel that could occur if this bill is passed.

Certain biofuels have a very specific chemical compound (fatty-acid methyl esters or FAME) as defined by ASTM D6751. Further, FAME is a liquid that clings to the surfaces with which it comes in contact and leaves a residue that provides a significant risk of contaminating jet fuel that is introduced into the same vessel (pipelines, storage tanks, barges), unless extensive and costly decontamination procedures are taken. Anything more than 5 parts per million of FAME found in jet fuel would render the entire batch of jet fuel unusable.

The fuel distribution facilities throughout Hawaii, including the multi-product pipelines from the local refineries to Honolulu International Airport, handle both gasoline and jet fuel which creates a significant risk of contamination of jet fuel. In addition, multi-product barges and off-loading pipelines are used to transport both gasoline and jet fuel to the outer islands, which also creates significant contamination of jet fuel at the outer island airports. Therefore, we recommend the handling processes and procedures are reviewed and clarified before biofuel

containing FAME is widely distributed. Another suggestion we have is to expand the language to include 2<sup>nd</sup> generation biofuels, since these advance fuels do not contain FAME or create contamination problems.

Respectfully,

Jack Schirmer  
President

\*HFFC members are Air Canada, Air New Zealand, Alaska Airlines, All Nippon Airways, American Airlines, Asiana Airlines, China Airlines, Delta Air Lines, Federal Express, Hawaiian Airlines, Island Air, Japan Airlines, Kalitta Air, Korean Air, Philippine Airlines, Qantas Airways, United Airlines, United Parcel Service, and US Airways.



**ALLIANCE BIODIESEL, LLC**  
PO BOX 166 PEPEEKEO, HI 96783  
(808) 938-0680 MKUSCH@MSN.COM

March 18, 2013

Representative Chris Lee, Chair  
Representative Cynthia Thielen, Vice Chair  
Committee on Energy and Environmental Protection

Representative Clift Tsuji, Chair  
Representative Gene Ward, Vice Chair  
Committee on Economic Development & Business

HEARING: Tuesday, March 19, 2013, 8:30am, Conference room 325

**Re: In support of Senate Bill 15, Proposed House Draft 1, Relating to Energy**

Dear Committee Chairs, Vice Chairs and Members,

I was unable to secure a flight to Honolulu, as they are all booked on such short notice. In lieu of being there in person, I would like you to consider my testimony here in support Bill 15, draft 1, relating to Energy.

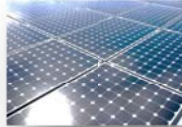
I am the manager of a local investment group who invested in Big Island Biodiesel, LLC on the principal of being Pono for the environment, a interchangeable substitute for foreign oil (diesel), and creating much needed high quality jobs right here in Hawaii. Our group is made up of everyday people who strongly believe that by supporting Bill 15, draft 1, you can support locally made biofuel and put it on a more level playing field to compete and in cooperation with traditional imported hydrocarbon fuels.

While the media parades a long list of companies with grand schemes to create biofuels in Hawaii, one company has quietly walked the walk and currently employs roughly 50 well compensated employees throughout the state: Pacific Biodiesel Technologies, LLC and it's affiliate Big Island Biodiesel, LLC. And while it's vital for our local economy to have good jobs, it's also critical to keep our dollars here by utilizing nearly 6 million gallons of locally refined biodiesel, reducing our dependence on foreign oil and the wars we must wage to keep those supplies available. In addition to the direct jobs, biodiesel will support a farming renaissance making local virgin crop oils throughout the state.

By supporting Bill 15, draft 1, you will put biofuels, not just ethanol, on equal footing to compete against foreign oil. Hawaii needs to be an energy leader on the national stage, and this is our chance!

Thank you for your time, please contact me with any questions you may have.

Matthias Kusch  
Alliance Biodiesel, LLC  
Pepeekeo, HI 96783  
(808) 938-0680



## **HOUSE COMMITTEE ON ENERGY & ENVIRONMENTAL PROTECTION**

March 19, 2013, 8:30 A.M.

Room 325

**(Testimony is 2 pages long)**

### **TESTIMONY IN SUPPORT OF SB 15 SD2 PROPOSED HD1**

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

The Blue Planet Foundation supports the proposed House Draft 1 of SB 15 SD2, amending the biofuel content requirement for motor fuels and establishing a biofuel production tax credit in place of the existing limited ethanol credit. This measure adopts two policies to accelerate the development of Hawai'i-based renewable fuels production: a renewable fuels requirement (correcting the existing requirement) and a biofuel production tax credit (applicable to all biofuels and based on actual production as opposed to facility cost).

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.

We support amending the existing motor fuel requirement to all biofuels, rather than specifically just ethanol, to account for five percent of all liquid transportation fuel sales in the State of Hawai'i. We concur that, despite several planned ethanol plants and an abundance of vacant sugar land, no ethanol production plants have been built, and we appreciate the broader support for all biofuels, allowing for consumer choice and the best technologies to emerge.

Blue Planet supports amending the proposed HD1 to provide the director more guidance in the ability to waive the requirement due to the lack of "competitively priced biofuel." The director should simultaneously consider other benefits, such as job creation, local revenue, environmental impact, in making the decision to authorize other fuels in place of biofuel.

[info@blueplanetfoundation.org](mailto:info@blueplanetfoundation.org)

55 Merchant Street 17<sup>th</sup> Floor • Honolulu, Hawai'i 96813 • 808-954-6142 • [blueplanetfoundation.org](http://blueplanetfoundation.org)

We strongly support the establishment of a broad biofuel production tax credit. Such a credit incentivizes what Hawai'i needs—the efficient production of biofuel—instead of simply providing credit for capital investment in facilities. We appreciate that the proposed House Draft of SB 15 SD2 defines biofuels for the purposes of the credit as “*liquid fuels produced within the State from renewable feedstocks transported less than one thousand miles from point of origin to the production facility located within the State*”. This will avoid an undesirable situation where feedstocks are imported for the development of biofuel.

This proposed measure puts into place two key policies to help develop Hawai'i's biofuel production capacity. We support its passage.

Thank you for the opportunity to testify.

**thielen3 - Charles**

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**From:** mailinglist@capitol.hawaii.gov  
**Sent:** Monday, March 18, 2013 3:20 PM  
**To:** EEPtestimony  
**Cc:** efzwick@gmail.com  
**Subject:** Submitted testimony for SB15 on Mar 19, 2013 08:30AM

**SB15**

Submitted on: 3/18/2013

Testimony for EEP on Mar 19, 2013 08:30AM in Conference Room 325

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
Edward F. Zwick	Individual	Support	No

Comments: This bill will be a great contributor to our State's energy independence. I strongly support it. We now have significant biofuels production in Hawaii, but zero for ethanol. This bill will give us a realistic chance to meet our no fossil fuel sustainable energy goals.

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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**thielen3 - Charles**

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**From:** mailinglist@capitol.hawaii.gov  
**Sent:** Sunday, March 17, 2013 9:33 PM  
**To:** EEPtestimony  
**Cc:** 808val@hawaii.rr.com  
**Subject:** Submitted testimony for SB15 on Mar 19, 2013 08:30AM

**SB15**

Submitted on: 3/17/2013

Testimony for EEP on Mar 19, 2013 08:30AM in Conference Room 325

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
Valerie Sisneros	Individual	Oppose	No

Comments: I strongly oppose this bill. The cost of implementing it and the damage possible to our vehicles, and just the further intrusion by government to dictate every area of our lives, including our gas tanks is unnecessary. There are always unintended consequences to the bad ideas of this government. Just give it up now and save us all a lot of headache and expensive. VOTE NO on this one please!!

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**thielen3 - Charles**

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**From:** mailinglist@capitol.hawaii.gov  
**Sent:** Monday, March 18, 2013 7:18 AM  
**To:** EEPtestimony  
**Cc:** gfd.maui@gmail.com  
**Subject:** \*Submitted testimony for SB15 on Mar 19, 2013 08:30AM\*

**SB15**

Submitted on: 3/18/2013

Testimony for EEP on Mar 19, 2013 08:30AM in Conference Room 325

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
Gerald F. Dahl	Individual	Oppose	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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03/18/13

Dear COMMITTEE ON ENERGY & ENVIRONMENTAL PROTECTION,

My name is Christopher Long. I live in Kurtistown on the Big Island and am currently a full-time student of agriculture at the University of Hawaii at Hilo. I write to you today to express my full support of S.B.15 S.D.2 H.D.1. I support this legislation because my dream is to become successful farmer in Hawaii, and to make my state more energy secure and self-sufficient by growing vegetable oil crops for biodiesel. This bill works toward all of these ends by providing the support this new industry needs to grow.

The growth of the local biodiesel industry will impact local agriculture by:

- Creating substantial local demand for biodiesel feedstock (vegetable oil)
- Creating seed cake, left from oil pressing, for use in animal feed or compost
- Creating valuable by-products used in agriculture
  - Potassium Sulfate
  - Refined glycerin used in animal feed
- Powering farm equipment
- Creating farm jobs

With the construction of a seed-crushing facility, (to be completed this summer) Big Island Biodiesel will create a constant demand for vegetable oil crops that local farmers can supply. This is only the beginning of locally grown biodiesel in Hawaii, please help support this industry in these crucial early times.