

HB 1689, HD2

RE: RELATING TO TAXATION

TESTIMONY



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

DAVID Y. IGE
GOVERNOR

LUIS P. SALAVERIA
DIRECTOR

MARY ALICE EVANS
DEPUTY DIRECTOR

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Statement of
LUIS P. SALAVERIA
Director
Department of Business, Economic Development, and Tourism
before the
SENATE COMMITTEE ON TRANSPORTATION AND ENERGY

Tuesday, March 22, 2015
2:45 p.m.
State Capitol, Conference Room 229

in consideration of
HB 1689, HD2
RELATING TO TAXATION.

Chair Inouye, Vice Chair Gabbard, and Members of the Committee.

The Department of Business, Economic Development & Tourism (DBEDT) offers comments on HB 1689, HD2, which establishes a renewable fuels facility tax credit and repeals the ethanol facility tax credit. HD2 amends the effective date to July 1, 2030.

With regards to the State's policy (reference: <http://energy.hawaii.gov/energypolicy>) of diversifying Hawaii's energy portfolio, we remain concerned that this bill does not provide a clear definition of how much renewable feedstock must originate from Hawaii and be used for renewable fuel production in order to qualify for the full tax credit, thus negating potential diversification of our energy portfolio with indigenous resources and leading to subsidization of non-indigenous resources. For example, a renewable fuel producer may use one percent Hawaii grown renewable feedstock and blend it with another 99 percent non-Hawaii sourced renewable feedstock and still qualify for the full tax credit under the present language of the bill. Therefore, this bill will require more clarity on the administration of the tax credit and how it will be computed, especially if a blend of renewable feedstock is allowed.

Regarding the State's policy to create an efficient market-place that benefits producers and consumers, the bill caps the available tax credit at an aggregate total of forty million gallons

per year. However, the bill continues to allow a single taxpayer of a renewable fuels facility to capture the full allocation of the credit, thus concentrating the tax credit benefit with a single individual/entity and contradicting our policy of creating an efficient marketplace.

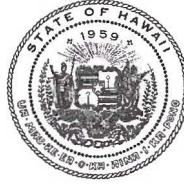
DBEDT also remains concerned about its responsibilities under this bill as DBEDT lacks, and would require, funding and human resources beyond our current budget to execute our responsibilities under the bill. Responsibilities of concern to DBEDT under this bill include: the verification of actual production of the renewable fuel facilities, which would be required to revise the facilities' capacity (lines 13-20, page 9); analyzing the impact of renewable feedstock traveling over five hundred miles (reference definition of qualifying renewable fuels, pages 4-5); and the annual report to the Governor and Legislature.

DBEDT defers to the Department of Taxation on the administration of the renewable fuels production tax credit; to the Department of Budget and Finance on the fiscal impacts of this measure; and to the Department of Health on the contribution of greenhouse gas emissions requirement relative to fossil fuel transport of renewable feedstock traveling over five hundred miles.

Thank you for the opportunity to offer these comments regarding HB 1689, HD2.

DAVID Y. IGE
GOVERNOR

SHAN TSUTSUI
LT. GOVERNOR



MARIA E. ZIELINSKI
DIRECTOR OF TAXATION

JOSEPH K. KIM
DEPUTY DIRECTOR

STATE OF HAWAII
DEPARTMENT OF TAXATION

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To: The Honorable Lorraine R. Inouye, Chair
and Members of the Senate Committee on Transportation and Energy

Date: March 22, 2016

Time: 2:45 P.M.

Place: Conference Room 229, State Capitol

From: Maria E. Zielinski, Director
Department of Taxation

Re: H.B. 1689, H.D. 2, Relating to Taxation.

The Department of Taxation (Department) appreciates the intent of H.B. 1689, H.D. 2, and provides the following comments for your consideration.

H.B. 1689, H.D. 2, amends the ethanol facility tax credit at section 235-110.3, Hawaii Revised Statutes, to apply to facilities that produce renewable fuels. The definition of renewable fuels include a variety of fuel products produced from "renewable feedstocks," which are defined. The measure has a defective effective date of July 1, 2030 and the amendments apply to taxable years beginning after December 31, 2015.

First, the Department notes that the suggested amendment to Paragraph (a)(4) is not clear. The paragraph reads "No taxpayer that claims the credit under this section shall use the investment upon which the claim under this section is made to claim any other tax credit under this chapter for the taxable year." The Department suggests clarification of this provision as the credit is limited by the "investment" amount, but the credit is not calculated on it.

Second, the Department notes that the definition provided for "qualified renewable fuels" requires additional certification for fuels produced from feedstocks transported more than five hundred miles using a fossil fuel. This addition is likely impermissible under the Commerce Clause of the United States Constitution, which typically does not allow differential tax treatment for products originating in different states. The Department defers to the Department of the Attorney General for an analysis of the constitutionality of this provision.

Third, the Department notes that this tax credit is certified by the Department of Business, Economic Development, and Tourism (DBEDT). The certification requirements are contained in subsection (d) of section 235-110.3, HRS, and is not edited by this measure. The Department defers to DBEDT regarding its ability to make the necessary certifications, but

requests that the certification provisions in this tax credit remain, as the Department is unable to make the technical judgments necessary to administer this tax credit.

Finally, the Department notes that this tax credit is refundable. As a general matter, the Department recommends that tax credits be non-refundable because refundable credits are more prone to wrongful claims and abuse.

Thank you for the opportunity to provide comments.

TAX FOUNDATION OF HAWAII

126 Queen Street, Suite 304

Honolulu, Hawaii 96813 Tel. 536-4587

SUBJECT: INCOME, Renewable Fuels Facility Tax Credit

BILL NUMBER: HB 1689, HD-2

INTRODUCED BY: House Committee on Finance

EXECUTIVE SUMMARY: Replaces the ethanol fuels income tax credit with a renewable fuels production income tax credit to encourage the production of such fuels. A direct appropriation would be preferable as it would provide some accountability for the taxpayer funds being utilized to support this effort. Meaning, we as taxpayers know what we're getting and we know how much we're paying for it.

BRIEF SUMMARY: Amends to HRS section 235-110.3, which now defines the ethanol facility tax credit, to be retitled the renewable fuels facility tax credit. The credit shall be allowed to taxpayers producing qualifying renewable fuels for an eight-year period beginning on the date of first production.

The annual dollar amount of the credit shall be 30% of the annual nameplate capacity if it is greater than 500,000 but less than 15,000,000 gallons. The credit amount is not to exceed 100% of the total of all investments made by the taxpayer in the facility during the credit period; the facility must operate at 75% or more of its nameplate capacity on an annualized basis; and the facility must be in production on or before January 1, 2017.

No taxpayer that claims the credit shall use the investment upon which the claim for credit is made to claim any other Hawaii income tax credit for the same taxable year.

Defines "qualifying renewable fuel" as fuel created from renewable feedstocks; provided that for the purpose of the renewable fuels facility tax credit, any renewable feedstock transported more than five hundred miles using a fossil fuel can become a qualifying renewable feedstock only upon a showing to the state energy office of the department of business, economic development, and tourism that the renewable feedstock serves a legitimate public purpose for Hawaii. For the purpose of this showing, the state energy office of the department of business, economic development, and tourism shall consider the impact of such fossil fuel transportation on the State's energy security and contribution to greenhouse gas emissions.

Defines "qualifying renewable fuels production" as fuel produced or generated from renewable feedstocks. All qualifying production shall be fermented, distilled, transesterified, gasified, pyrolyzed, combusted, or produced by physical, chemical, biochemical, or thermochemical conversion methods at the facility.

Defines "qualifying renewable fuels production facility" as one located in Hawaii that produces or generates, directly from renewable feedstocks, fuel grade renewable fuels meeting the relevant ASTM International specifications for the particular fuel or other industry specifications for

liquid or gaseous fuels, including but not limited to: (1) methanol, ethanol, or other alcohols; (2) hydrogen; (3) biodiesel or renewable diesel; (4) biogas; (5) other biofuels; or (6) renewable jet fuel or renewable gasoline.

Defines “renewable feedstocks” as (1) biomass crops; (2) agricultural residues; (3) oil crops, including but not limited to algae, canola, jatropha, palm, soybean, and sunflower; (4) sugar and starch crops, including but not limited to sugar cane and cassava; (5) other agricultural crops; (6) grease and waste cooking oil; (7) food wastes; (8) municipal solid wastes and industrial wastes; (9) water; and (10) animal residues and wastes, that can be used to generate energy.

EFFECTIVE DATE: July 1, 2030; applies to taxable years beginning after December 31, 2015.

STAFF COMMENTS: Act 289, SLH 2000, established an investment tax credit to encourage the construction of an ethanol production facility in the state. Act 140, SLH 2004, changed the credit from an investment tax credit to a facility tax credit. This measure proposes to amend the ethanol facility tax credit to encompass facilities that produce other renewable 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 years is that unbridled tax incentives, where there is no accountability or limits on how much in credits can be claimed, are irresponsible as the cost of these credits goes far beyond what was ever intended. Instead, lawmakers should consider repealing the ethanol facility credit and look for other types of alternate energy to encourage through the appropriation of a specific number of taxpayer dollars. At least lawmakers would have a better idea of what is being funded and hold the developers of these alternate forms of energy to a deliberate timetable or else lose the funds altogether. A direct appropriation would be preferable to the tax credit as it would: (1) provide some accountability for the taxpayers’ funds being utilized to support this effort; and (2) not be a blank check.

Ethanol was the panacea of yesterday; lawmakers have since learned that there are more minuses to the use of ethanol than there are pluses. Ethanol production demands more energy to produce than using a traditional petroleum product to produce the same amount of energy, and the demand for feedstock that is used to produce ethanol basically redirects that feedstock away from traditional uses, causing products derived from the feedstock to substantially increase in price. It may make sense to encourage development of other alternative fuels that will not have these issues, but doing it in open-ended fashion by way of a tax credit is an invitation to abuse.

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

this were an appropriation, taxpayers would then know who to hold accountable for the waste of those tax dollars.

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

Digested 3/17/2016



Email: communications@ulupono.com

SENATE COMMITTEE ON TRANSPORTATION & ENERGY
Tuesday, March 22, 2016 — 2:45 p.m. — Room 229

Ulupono Initiative Strongly Supports HB 1689 HD 2, Relating to Taxation

Dear Chair Inouye, Vice Chair Gabbard, and Members of the Committee:

My name is Murray Clay and I am Managing Partner of the Ulupono Initiative, a Hawai'i-based impact investment firm that strives to improve the quality of life for the people of Hawai'i by working toward solutions that create more locally produced food; increase affordable, clean, renewable energy; and reduce waste. We believe that self-sufficiency is essential to our future prosperity and will help shape a future where economic progress and mission-focused impact can work hand in hand.

Ulupono strongly supports HB 1689 HD 2, which broadens the renewable fuels tax credit, because it aligns with our goal of increasing the production of clean, renewable energy in Hawai'i.

In recent years Hawai'i has seen significant growth in renewable energy adoption moving the State towards its renewable energy goals. However, while the state locally produces about 14% renewable electricity, renewable fuels are far less than 1% of fuel use. Electricity represents approximately 40% of energy use in the state while transportation fuels account for a larger share at 51%. This is disturbing as this means we are making the least amount of progress to date in renewable production for the largest share of the state's energy use.

We strongly believe that this bill has the potential to open the door for significant renewable energy investment in Hawai'i.

As Hawai'i's energy issues become more complex and challenging, we appreciate this committee's efforts to look at policies that support renewable energy production.

Thank you for this opportunity to testify.

Respectfully,

Murray Clay

Investing in a Sustainable Hawai'i

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The Senate
Transportation and Energy Committee

Tuesday, March 22, 2016
2:45 p.m., Conference Room # 229

RE: HB 1689, HD2; Relating to Renewable Fuels Facility Tax Credit

Chair Senator Lorraine R. Inouye; Vice Chair Senator Mike Gabbard; and Members:

My name is Guy Kaniho, General Manager of BioEnergy Hawaii, LLC (BEH). A Hawaii limited liability company, which is owned and managed by Pacific Waste, Inc. a Hawaii Corporation with its principle offices in Kailua-Kona, Hawaii.

Pacific Waste is the largest waste hauling company on the Big Island and collects and disposes of nearly 75% of the commercial municipal solid waste ("MSW") in Hawaii County. As you know, there are many concerns relating to landfill disposal including the limited space available and the environmental impacts associated with landfill operations. It is evident that the current practice of landfill disposal is an unsustainable long term solution for managing the island's solid waste stream and must be addressed immediately.

BioEnergy Hawaii's primary business is the design, construction and operations of one or more bioconversion facilities in the State of Hawaii. Our proposed facility will sort, separate and process the MSW into a usable materials and feedstock. The separated feedstocks will be converted through our integrated technology designed to produce renewable energy. The project will produce baseload renewable electricity and/or biofuel in the form of renewable natural gas ("RNG") which can be utilized in distributed power generation or in the transportation industry. In addition to providing a local alternative energy source, the facility will significantly reduce the amount of MSW being deposited into the landfills, thereby reducing the associated environmental impacts.

With the recent decision by the State of Hawaii to move to 100% renewable by the year 2045, it is imperative that we provide an incentive for other developers and technologies to participate and help us achieve this most aggressive goal. HB 1689 is one of many incentives that can help put Hawaii on this track.

BioEnergy Hawaii supports HB 1689, CREATING A RENEWABLE FUELS FACILITY INVESTMENT CREDIT TO ENCOURAGE THE DEVELOPMENT OF THE FACILITIES in Hawaii for the production of fuels from renewable sources that are indigenous to Hawaii.

Thank you for the opportunity to submit my testimony.

Guy Kaniho
General Manager
BioEnergy Hawaii, LLC



1110 University Avenue, Suite 402
Honolulu, Hawaii 96826
Tel: (808) 371-1475
www.REACHhawaii.org

Testimony of ERIK KVAM
Director of Renewable Energy Action Coalition of Hawaii
e-mail: Erik.Kvam@REACHhawaii.org

In SUPPORT of HB 1689 RELATING TO TAXATION

**Before the
SENATE COMMITTEE ON TRANSPORTATION AND ENERGY**

Tuesday, March 22, 2016 2:45 p.m.

Aloha, Chair Inouye, Vice-Chair Gabbard and members of the Committee.

My name is Erik Kvam. I am a Director of Renewable Energy Action Coalition of Hawaii (REACH). REACH is a trade association whose vision is a Hawaiian energy economy based 100% on renewable sources indigenous to Hawaii.

Hawaii is far behind in achieving its renewable goals for transportation. Transportation fuels account for about two-thirds of all the energy consumed in Hawaii. Virtually all of Hawaii's energy for transportation comes from imported fuels.

Without renewable fuel production from sources indigenous to Hawaii, Hawaii will have virtually no fuel available for critical transportation needs when imported fuels stop flowing to Hawaii.

REACH SUPPORTS HB 1689 – creating a renewable fuels facility investment tax credit -- to encourage the development of facilities in Hawaii for the production of fuels from renewable sources indigenous to Hawaii. **REACH SUPPORTS** HB1689, so that Hawaii has the transportation fuels it needs when imported fuels stop flowing to Hawaii.

REACH believes that the first sentence of the second paragraph of section 235-110.3(a) should be amended by inserting the words "the taxpayer's investment in the facility if the facility's annual nameplate capacity" in place of the words "its annual nameplate capacity

if the facility's nameplate capacity." REACH believes that this amendment is necessary to make clear that the tax credit is calculated as a percentage of the taxpayer's investment in the qualifying renewable fuels production facility.

Thank you for providing this opportunity to testify.



Directors

Jody Allione
Project Development
Consultant

Joe Boivin
Hawaii Gas

Kelly King
Pacific Biodiesel

Warren S. Bollmeier II
WSB-Hawaii

TESTIMONY IN SUPPORT

**WARREN BOLLMEIER ON BEHALF OF THE
HAWAII RENEWABLE ENERGY ALLIANCE BEFORE THE
SENATE COMMITTEE ON TRANSPORTATION AND ENERGY**

HOUSE BILL 1689 HD2 Relating to Taxation

WEDNESDAY, MARCH 22, 2016 2:45 PM

Chair Inouye, Vice Chair Gabbard and Members of Transportation and Energy,

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 purpose of this Act is to amend the existing ethanol facility income tax credit to include other renewable fuels.

HREA offers comments on this measure:

- 1) Renewable fuels can diversify Hawaii's fuel mix, which can increase system reliability and reduce risk.
- 2) Intermittent Wind and Solar can be better managed with complementary firm power from renewable fuels.
- 3) Renewable fuels can displace oil.
- 4) Renewable fuels production is limited and is there are no Hawaii incentives to produce.
- 5) HREA would prefer the Production Tax Credit as a more meaningful way of incenting renewable fuels as offered in SB2652 SD2.

Mahalo for this opportunity to testify.



HAWAII GAS
THE CLEAN ENERGY COMPANY

Testimony to the Senate Committee on Transportation and Energy
Wednesday, March 22, 2016 at 2:45 pm
Conference Room 229, State Capitol
RE: House Bill 1689 HD2

Chair Inouye, Vice Chair Gabbard and Members of the Committee on Transportation and Energy:

Hawaii Gas provides the following comments on HB 1689 HD2 to amend the ethanol facility income tax to include other renewable fuels such as biogas.

- 1) As written, HB 1689 HD2 applies to “gallons”, and more specifically it means gallons of ethanol, but all alternative fuels are not produced in gallons. Some are produced in a gaseous form such as hydrogen and biogas. Therefore, a conversion is needed that correctly applies the facility tax credit based on the amount of energy produced. The simplest way to do this is to first define the amount of energy contained in one gallon of ethanol and apply that value to other alternative fuels.
 - a) The following changes are therefore suggested in double underlined text: “For each ~~[qualified ethanol]~~ qualifying renewable fuels production facility, the annual dollar amount of the ~~[ethanol]~~ renewable fuels facility tax credit during the eight-year period shall be equal to thirty per cent of its annual nameplate capacity if the facility's nameplate capacity is greater than five hundred thousand but less than fifteen million gallons. Where, one gallon is equal to 76,330 British Thermal Units (BTU) as defined by the United States Department of Energy Advanced Fuels Data Center, which is the energy content per gallon of ethanol.”
- 2) As written, HB 1689 HD2 only applies to those facilities that produce alternative fuels on or before January 1, 2017. Yet, it is not possible to plan, permit and construct a new facility by January 1, 2017, so the intended benefit of this Bill is unclear. If the Bill is to create incentives for individuals and companies to produce alternative fuels than it must be extended to at least January 1, 2020 to allow adequate time to plan, permit and construct new facilities. If the intent is to benefit only existing alternative fuel production facility(s) then we believe it is too narrowly focused and will not incentivize more renewable fuels production.
 - a) The following changes are therefore suggested in double text: “(3) The qualifying ~~[ethanol]~~ renewable fuels production facility is in production on or before ~~January 1, 2017~~ January 1, 2020.”

Expanding the facility income tax credit to include other fuels will help incentivize individuals and businesses to develop local biofuel feedstock and production facilities, which can provide a number of benefits:

1. Biofuels can provide firm power to complement the intermittency of wind and solar resources.



HAWAII GAS
THE CLEAN ENERGY COMPANY

2. Biofuels can help displace the oil now used to produce synthetic natural gas.
3. Biofuels can be used in the surface transportation (ground and marine) sectors to reduce the 500 million gallons of diesel and gasoline used each year in Hawaii today.
4. Biofuels diversify our fuel mix, which reduces risk and increases system reliability.

Thank you for the opportunity to testify.

March 21, 2016

HB 1689

Testimony By: Paul Tower, President
Hawaii Renewable Resources, LLC
Aiea, Hawaii

Purpose of Bill: Establish renewable fuels facility tax credit.

Hawaii Renewable Resources, LLC is in strong support of HB 1689 for renewable fuels facility tax credit. The bill is an important step in meeting our state renewable energy goals.

Kaala Coleman

From: mailinglist@capitol.hawaii.gov
Sent: Monday, March 21, 2016 10:52 AM
To: TRE Testimony
Cc: jboivin@hawaiiigas.com
Subject: Submitted testimony for HB1689 on Mar 22, 2016 14:45PM
Attachments: Hawaii Gas Testimony HB 1689 HD 2 3.22.2016.pdf

Categories: Red Category

HB1689

Submitted on: 3/21/2016

Testimony for TRE on Mar 22, 2016 14:45PM in Conference Room 229

Submitted By	Organization	Testifier Position	Present at Hearing
Joseph Boivin	Individual	Support	No

Comments:

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

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