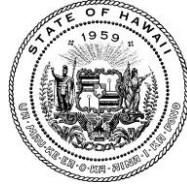


JOSH GREEN M.D.  
GOVERNOR

SYLVIA LUKE  
LT. GOVERNOR



STATE OF HAWAII  
**DEPARTMENT OF TAXATION**

Ka 'Oihana 'Auhau

P.O. BOX 259

HONOLULU, HAWAII 96809

PHONE NO: (808) 587-1540

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GARY S. SUGANUMA  
DIRECTOR

KRISTEN M.R. SAKAMOTO  
DEPUTY DIRECTOR

**TESTIMONY OF  
GARY S. SUGANUMA, DIRECTOR OF TAXATION**

**TESTIMONY ON THE FOLLOWING MEASURE:**

S.B. No. 3360, S.D. 1, Relating to Renewable Fuel.

**BEFORE THE:**

House Committee on Energy & Environmental Protection

**DATE:** Tuesday, March 19, 2024

**TIME:** 10:00 a.m.

**LOCATION:** State Capitol, Room 325

Chair Lowen, Vice-Chair Cochran, and Members of the Committee:

The Department of Taxation ("Department") offers the following comments regarding S.B. 3360, S.D. 1, for your consideration.

S.B. 3360, S.D. 1, makes significant changes to the Renewable Fuels Production Tax Credit (RFPTC) in section 235-110.32, Hawaii Revised Statutes (HRS). The bill increases the annual dollar amount that may be claimed from 20 cents to 35 cents per 76,000 British thermal units of renewable fuels produced and sold for distribution in the State. It also creates an additional \$1 credit per gallon of renewable fuels produced from renewable feedstock locally grown or recycled in the State, and another \$1 credit per gallon of renewable fuels produced with lifecycle greenhouse gas emissions at least 75 percent below that of fossil fuels.

The bill also changes the per-taxpayer credit cap from a set amount of \$3,500,000 per taxable year to 75 percent of the total amount of RFPTCs allowed in a taxable year. The bill then replaces the credit's aggregate cap of \$20,000,000 with an unspecified amount. The Department notes that if a taxpayer's credit is reduced because of the aggregate cap in a given tax year, the taxpayer may claim a credit for the amount of the reduction in the subsequent year.

Additionally, S.B. 3660, S.D. 1, extends the availability of the RFPTC by amending the definition of "credit period" from 10 consecutive years to an unspecified amount of time and provides that any taxpayer that previously claimed RFPTCs would be reset for tax years beginning after December 31, 2023. The measure also extends the Hawaii State Energy Office's (HSEO) deadline to issue certificates from 30 to 60 days after the taxpayer's statement is due and requires the HSEO to determine whether the lifecycle greenhouse gas emissions for each type of qualified fuel produced by the taxpayer is under 75 percent lower than the lifecycle greenhouse gas emissions of fossil fuels. The bill also adds definitions for "lifecycle greenhouse gas emissions" and "locally grown".

S.B. 3660, S.D. 1, has a placeholder effective date of January 1, 2060 and shall apply to taxable years beginning after December 31, 2023.

The Department defers to HSEO regarding its ability to certify the RFPTC with these proposed changes, but requests that these certification requirements be maintained. The Department does not have the subject-matter expertise in renewable energy necessary to certify these credits, nor does it have the administrative capability to track aggregate caps.

The Department further notes that the measure's amendment to section 235-110.32(a) at page 4, lines 4-6, which provides that "any taxpayer who previously claimed credits under this chapter shall be reset for tax years beginning after December 31, 2023," is ambiguous. If the intent of this provision is to allow taxpayers who previously claimed the RFPTC to be eligible to claim the RFPTC for a single 20-year period beginning in tax year 2024, the Department suggests amending the provision to read as follows:

Each taxpayer, together with all of its related entities as determined under section 267(b) of the Internal Revenue Code and all business entities under common control, as determined under sections 414(b), 414(c), and 1563(a) of the Internal Revenue Code, shall not be eligible for more than a single [~~ten-year~~] credit period[-]; provided that for taxable years beginning after December 31, 2023, a taxpayer may be eligible to claim the credit for a single credit period notwithstanding any claim made by the taxpayer for the credit under this section for taxable years beginning before January 1, 2024.

Thank you for the opportunity to provide comments on this measure.



**TESTIMONY OF  
THE DEPARTMENT OF THE ATTORNEY GENERAL  
KA 'OIHANA O KA LOIO KUHINA  
THIRTY-SECOND LEGISLATURE, 2024**

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**ON THE FOLLOWING MEASURE:**

S.B. NO. 3360, S.D. 1, RELATING TO RENEWABLE FUEL.

**BEFORE THE:**

HOUSE COMMITTEE ON ENERGY & ENVIRONMENTAL PROTECTION

**DATE:** Tuesday, March 19, 2024                      **TIME:** 10:00 a.m.

**LOCATION:** State Capitol, Room 325 and Videoconference

**TESTIFIER(S):** Anne E. Lopez, Attorney General, or  
Joshua J. Michaels, Deputy Attorney General

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Chair Lowen and Members of the Committee:

The Department of the Attorney General opposes this bill as currently drafted due to our serious concerns about its constitutionality.

This bill proposes to update the renewable fuels production tax credit established by section 235-110.32, Hawaii Revised Statutes, to incentivize locally grown, produced, generated, or collected renewable fuel.

Taxpayers who produce renewable fuels are provided an additional credit value of \$1 per gallon for renewable fuels "produced from renewable feedstock locally grown or recycled in the State[.]" Page 3, lines 7 through 10 (emphasis added). "Locally grown" is defined as "renewable feedstock that is grown, produced, generated, or collected in the State." Page 6, lines 10 through 11.

This bill could be subject to challenge as violating the Commerce Clause of the United States Constitution, which provides that Congress shall have the power to "regulate Commerce . . . among the several States." U.S. Const. art. I, § 8, cl. 3. "Though phrased as a grant of regulatory power to Congress, the Clause has long been understood to have a 'negative' aspect that denies the States the power unjustifiably to discriminate against or burden the interstate flow of articles in commerce." *Or. Waste Sys., Inc. v. Dep't of Env'tl. Quality*, 511 U.S. 93, 98 (1994). This negative aspect of the Commerce Clause is known as the Dormant Commerce Clause; this doctrine prohibits states from "advancing their own commercial interests by curtailing the movement of

articles of commerce, either into or out of the state," *Fort Gratiot Sanitary Landfill, Inc. v. Mich. Dep't of Nat. Res.*, 504 U.S. 353, 359 (1992) (internal brackets omitted), to address "economic protectionism," i.e., "regulatory measures designed to benefit in-state economic interests by burdening out-of-state competitors." *Dep't of Revenue of Ky. v. Davis*, 553 U.S. 328, 337 (2008).

A tax credit may violate the Dormant Commerce Clause if it is "facially discriminatory, discriminatory in effect, or discriminatory in purpose." See *DIRECTV v. Utah State Tax Comm'n*, 364 P.3d 1036, 1040 (Utah 2015). For example, in *Bacchus Imports Ltd. v. Dias*, 468 U.S. 263 (1984), the United States Supreme Court struck down an exemption from the liquor tax for sales of okolehau and fruit wine brewed in Hawaii from locally grown products upon finding that the exemption bestowed a commercial advantage on locally produced products; see also *New Energy Co. of Ind. v. Limbach*, 486 U.S. 269 (1988) (holding that ethanol tax credit for each gallon of ethanol sold, but only if the ethanol was produced in Ohio, violated Dormant Commerce Clause).

Similar to the situation in *Bacchus Imports*, the proposed tax credit may be challenged under the Commerce Clause because it could be construed by a court as bestowing a commercial advantage on products using "locally grown" feedstock insofar as the credit encourages and incentivizes the purchase and use of such products versus products manufactured with the same ingredients grown outside of the State.

Based on the foregoing, we respectfully ask that these concerns be addressed. Accordingly, we recommend deleting the following:

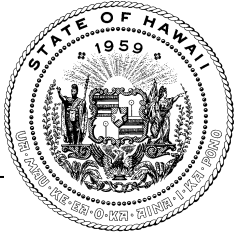
- (1) The phrase "locally sourced" in section 1, at page 1, lines 13-14 and 17, and page 2, line 3;
- (2) The wording "to incentivize locally grown, produced, generated, or collected renewable fuel" in section 1, at page 2, lines 6-7;
- (3) The phrase "provided further that there shall be an additional credit value of \$1.00 per gallon for renewable fuels produced from renewable feedstock locally grown or recycled in the State;" in section

235-110.32(a), HRS, as amended by section 2(1) of the bill, on page 3, lines 7-10; and

- (4) The definition of "locally grown" feedstock in section 235-110.32(o), HRS, as amended by section 2(4) of the bill, at page 6, lines 10-11.

These changes would resolve the Department's constitutional concerns. The Department respectfully asks your Committee to make the recommended amendments or otherwise defer this bill.

Thank you for the opportunity to provide testimony.



# HAWAII STATE ENERGY OFFICE STATE OF HAWAII

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GOVERNOR

SYLVIA LUKE  
LT. GOVERNOR

MARK B. GLICK  
CHIEF ENERGY OFFICER

(808) 451-6648  
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Testimony of  
**MARK B. GLICK, Chief Energy Officer**

before the  
**HOUSE COMMITTEE ON ENERGY & ENVIRONMENTAL PROTECTION**

Tuesday, March 19, 2024  
10:00 AM  
State Capitol, Conference Room 325 and Videoconference

Providing Comments on  
**SB 3360, SD1**

## **RELATING TO RENEWABLE FUEL.**

Chair Lowen, Vice Chair Cochran, and members of the Committee, the Hawai'i State Energy Office (HSEO) provides comments on SB 3360, SD1, which 1) updates the Renewable Fuels Production Tax Credit (RFPTC) to incentivize locally grown, produced, generated, or collected renewable fuel; 2) extends the credit period from ten to twenty consecutive years; and 3) increases the total amount of tax credits allowed in any calendar year.

HSEO's comments are guided by its mission to promote energy efficiency, renewable energy, and clean transportation to help achieve a resilient, clean energy, decarbonized economy.

HSEO appreciates the intent of the proposal to expand the RFPTC, which is a significant financial incentive for renewable fuel producers and contributes to achieving greater energy security for Hawai'i. HSEO recommended in the recent HSEO Act 238 Report the following actions to improve the efficacy of the RFPTC: 1) requiring renewable fuel to meet an established lifecycle carbon intensity threshold; 2) lowering the production minimum to allow for smaller renewable fuels producers to take advantage of the tax credit; and 3) removing or extending the 10-year eligibility limit as

desirable means to expand the RFPTC.<sup>1</sup> HSEO appreciates that the recommendations of the Act 238 report are reflected in this bill.

HSEO recommends the following changes to SB 3360, SD1, distinguished in **bold**. The rationale for each change is provided below each suggested change.

**Page 2, line 19**

For each taxpayer producing renewable fuels, the annual dollar amount of the renewable fuels production tax credit during the twenty-year credit period shall ~~[be]~~ include an amount equal to **20 ~~35~~** cents per seventy-six thousand British thermal units of renewable fuels using the lower heating value sold for distribution in the State;

**Page 3, lines 1-3**

... provided that the taxpayer's production of renewable fuels is not less than two billion five hundred million British thermal units lower heating value of renewable fuels per calendar year;

**Page 3, lines 7 through 12**

provided further that there shall be an additional credit value of ~~\$1.00 per gallon~~ 15 cents per seventy-six thousand British thermal units of renewable fuels using the lower heating value for renewable fuels, inclusive of sustainable aviation fuels, produced from renewable feedstock locally grown or recycled in the State; ~~provided further that there shall be an additional credit of \$1 per gallon for the production of sustainable aviation fuel;~~

HSEO supports extending the duration of the tax credit. However, while HSEO supports increasing the credit for renewable fuels producers, HSEO believes the current credit amount of 20 cents per 76,000 Btu using lower heating value (LHV) is adequate to incentivize the production of renewable fuels with imported feedstock and the additional credit of 15 cents per 76,000 Btu LHV may be best suited for fuels produced using local feedstock. While HSEO supports the production of aviation fuels and notes

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<sup>1</sup> Hawai'i State Energy Office (2023). Hawai'i Pathways to Decarbonization, Act 238 Report to the 2024 Hawai'i State Legislature (Act 238 Report). (Page 11)

the volume needed to meet our state's decarbonization goals is substantial, allowing an additional \$1 per gallon credit for the production of sustainable aviation fuel is excessive and may not be a prudent use of state funds.

Further, HSEO requests that British thermal units with lower heating values be specified to ensure appropriate calculations and energy conversions. HSEO recommends consistent units of energy be used for the tax credit, as gallons may not be the most appropriate for certain fuel types, such as natural gas which is more commonly measured in units of volume. Accordingly, the use of the British thermal unit (btu) derived using the lower heating value is an appropriate metric to compare energy sources, or fuels, on an equal basis, and consistency allows for easier accounting and verification.

HSEO understands that there will be substantial demand for sustainable aviation fuel; however, granting sustainable aviation fuel an additional credit of potentially two dollars per gallon is extensive, and could compete unfairly for the tax credit based on the volume of fuel needed for aviation and the tax credit cap, which is set-up to be allocated to each eligible taxpayers for each given year in proportion to the total amount of renewable fuels produced.

**Page 3, lines 13 through 14**

provided further that the tax credit shall only be claimed for fuels with lifecycle emissions at least seventy-five per cent below that of fossil fuels in which the renewable fuel is most likely to replace.

**The same edit should be carried through on Page 5, lines 2-3**

(3) Provide the taxpayer with a determination of whether the lifecycle greenhouse gas emissions for each type of qualified fuel produced is lower than that of fossil fuels[-] and whether the lifecycle greenhouse gas emissions for each type of qualified fuel produced is seventy-five per cent lower than that of the fossil fuel in which the renewable fuel is most likely to replace."



HSEO recommends specifying the comparison of fossil fuel be the fuel in which the renewable fuel receiving the tax credit is most likely to replace. Without this specification, it is difficult to compare, as all fuels have wide-ranging lifecycle emissions or carbon intensities. Further, HSEO recommends this is consistent with federal treasury tax credit guidance.<sup>2</sup>

**Page 6, Line item 1-6**

"Lifecycle greenhouse gas emissions" means the aggregate attributional core lifecycle greenhouse gas emissions values including upstream emissions, midstream emissions, transportation emissions, and generation or operational emissions. utilizing the most recent version of Argonne National Laboratory's Greenhouse Gases, Regulated Emissions, and Energy use in Technologies (GREET) Model, inclusive of agricultural practices and carbon capture sequestration.

Regarding requiring the use of the GREET model, HSEO advises that while HSEO uses the GREET model to verify the emissions analysis after submittal and has included reference to the model in its guidance documents for the credit, the GREET model may not be the best accounting tool to capture lifecycle emissions in certain circumstances. For example, there are occasions when renewable fuels producers may have completed a more individualized and comprehensive GHG analysis and submitted it to another regulatory agency for fuel contracts to the utility.

Finally, guidance from the Environmental Protection Agency (EPA) renewable fuels program suggests that sequestration activities, unrelated to the production of the fuels, not be included in the lifecycle analysis.<sup>3</sup> The lifecycle assessment of fuel production should not include activities that are unrelated to the fuel lifecycle (e.g.,

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<sup>2</sup> <https://www.catf.us/2023/12/new-treasury-tax-credit-guidance-sustainable-aviation-fuels-enhance-carbon-intensity-assessments-better-account-indirect-land-use-change-emissions/#:~:text=To%20qualify%20for%20the%20credit,conventional%20petroleum%2Dderived%20jet%20fuel>.

<sup>3</sup> US Environmental Protection Agency (2023). Lifecycle Analysis of Greenhouse Gas Emissions under the Renewable Fuel Standard. Available at: <https://www.epa.gov/renewable-fuel-standard-program/lifecycle-analysis-greenhouse-gas-emissions-under-renewable-fuel#:~:text=The%20EPA's%20assessment%20of%20fuel,employees%20commuting%20to%20the%20facility>).

offset projects) or emissions associated with physical and organizational infrastructure (e.g., facility construction, employees commuting to the facility). Accordingly, HSEO recommends only onsite sequestration activities directly related to the production of the fuels, e.g. soil amendments and climate-smart agricultural practices be included in the emissions analysis. These activities would automatically be included in the upstream emissions/feedstock analysis; therefore, HSEO recommends removing language referencing carbon capture sequestration to avoid potential misinterpretation.

Thank you for the opportunity to testify.

# TAX FOUNDATION OF HAWAII

126 Queen Street, Suite 305

Honolulu, Hawaii 96813 Tel. 536-4587

**SUBJECT:** INCOME TAX, Renewable Fuels Production Tax Credit Enhancement

**BILL NUMBER:** SB 3360 SD 1

**INTRODUCED BY:** Senate Committee on Ways and Means

**EXECUTIVE SUMMARY:** Updates the Renewable Fuels Production Tax Credit to incentivize locally grown, produced, generated, or collected renewable fuel. Extends the credit period from ten to an unspecified length of time. Increases the total amount of tax credits allowed to an unspecified amount in any calendar year.

**SYNOPSIS:** Amends section 235-110.32, HRS, to raise the credit from 20 to 35 cents per 76,000 BTU of renewable fuels produced and sold for distribution in the State. Removes the \$3.5 million aggregate cap on the credit but specifies that the credit awarded to any one taxpayer shall not exceed 75% of the total amount of credits awarded in the year. Adds a \$1 per gallon credit for renewable fuels produced from locally sourced renewable feedstock. Adds a \$1 per gallon credit for production of renewable fuels produced with lifecycle greenhouse gas emissions at least seventy-five per cent below that of fossil fuels. Increases the time within which the Hawaii State Energy Office is given to respond to a request for certification from 30 to 60 days. Raises the aggregate credit cap from \$20 million to \$ [unspecified amount]. Increases the credit period from 10 to an unspecified number of consecutive years.

Adds a definition of “lifecycle greenhouse gas emissions” as the aggregate attributional core lifecycle greenhouse gas emissions values utilizing the most recent version of Argonne National Laboratory's Greenhouse gasses, Regulated Emissions, and Energy use in Technologies (GREET) Model, inclusive of agricultural practices and carbon capture sequestration.

Adds a definition of “locally grown” as renewable feedstock that is grown, produced, generated, or collected in the State.

**EFFECTIVE DATE:** January 1, 2060; applicable to taxable years beginning after December 31, 2023.

**STAFF COMMENTS:** Act 202, SLH 2016, enacted a renewable energy production credit with a five-year life. The credit sunset on December 31, 2021. The credit was revived by Act 16, SLH 2022 with an aggregate cap of \$20 million.

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 encourage alternative energy

production through the appropriation of a specific number of taxpayer dollars. The State could directly purchase energy, or it could give a subsidy to developers. Then, 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.

There is also a constitutional issue. The bill applies an additional credit for fuel from "locally grown" feedstock which is defined as grown, produced, generated, or collected in the State. This restriction could be unconstitutional under the Commerce Clause of the Constitution because the same preferential tax treatment is not allowed for competing products from other States. *See In re Hawaiian Flour Mills, Inc.*, 76 Haw. 1, 868 P.2d 419 (1994); *Bacchus Imports, Inc. v. Dias*, 468 U.S. 263 (1984); Hawaii Tax Information Release No. 93-4. In *Hawaiian Flour Mills*, the Hawaii Supreme Court determined that a general excise tax exclusion for locally grown, raised, or caught agricultural, meat, or fish products for consumption out-of-state violated the Commerce Clause of the United States Constitution. The Court found that appellant Hawaiian Flour Mills, Inc. was entitled to the exemption from the general excise tax on its sales of fresh food products to be consumed out-of-State by persons engaged in interstate or foreign commerce, whether or not the fresh food products were locally grown, raised, or caught.

Digested: 3/12/2024

**SB-3360-SD-1**

Submitted on: 3/14/2024 5:04:39 AM

Testimony for EEP on 3/19/2024 10:00:00 AM

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Testify</b>
Gene Harrington	Biotechnology Innovation Organization	Support	Written Testimony Only

Comments:

BIO supports SB 3360\_SD1 and urges a ‘yes’ vote on this important legislation, which will greatly benefit Hawai‘i’s agricultural sector. Under the bill, the production of locally produced renewable fuel - generated by Hawai‘i grown crops – will be incentivized, reducing carbons emissions and boosting the economy, especially in rural areas.



P.O. Box 253, Kunia, Hawai'i 96759  
Phone: (808) 848-2074; Fax: (808) 848-1921  
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March 19, 2024

HEARING BEFORE THE  
HOUSE COMMITTEE ON ENERGY & ENVIRONMENTAL PROTECTION

**TESTIMONY ON SB 3360, SD1**  
RELATING TO RENEWABLE FUEL

Conference Room 325 & Videoconference  
10:00 AM

Aloha Chair Lowen, Vice-Chair Cochran, and Members of the Committee:

I am Brian Miyamoto, Executive Director of the Hawai'i Farm Bureau (HFB). Organized since 1948, the HFB is comprised of 1,800 farm family members statewide and serves as Hawai'i's voice of agriculture to protect, advocate, and advance the social, economic, and educational interests of our diverse agricultural community.

**The Hawai'i Farm Bureau supports SB 3360, SD1**, which updates the Renewable Fuels Production Tax Credit to incentivize locally grown, produced, generated, or collected renewable fuel, extends the credit period from ten to an unspecified length of time, and increases the total amount of tax credits allowed to an unspecified amount in any calendar year.

Renewable energy is important to the State's energy goals. Biofuels can play a critical role in helping Hawai'i reach the goal of one hundred percent renewable energy by 2045, help to diversify Hawai'i's economy and agricultural sector, reduce greenhouse gas emissions, and reduce our dependence on imported oil.

HFB supports the production of dedicated energy crops, crop residues, and agricultural wastes into economically and environmentally sustainable biofuels and value-added by-products such as livestock feed. The renewable fuels production tax credit is an important incentive for the production of locally grown renewable fuels and supports the State's clean energy and carbon reduction goals.

Thank you for this opportunity to testify on this important subject.



**Hawai'i Forest Industry Association**

7192 Kalaniana'ole Hwy  
Suite A-143A, #249  
Honolulu, HI 96825  
Phone: 808/933/9411  
Email: hfia@hawaiiforest.org

**Date:** 03/14/24

**TO:** EEP Chair Lowen, EEP Vice Chair Cochran, EEP Committee Members Gates, Kahaloa, Perruso, Woodson, Ward

**FROM:** Hawai'i Forest Industry Association (HFIA)

**SUBJECT:** Testimony in Support of SB3360 SD2 Relating to Renewable Energy

Dear Chair Lowen, Vice Chair Cochran, and Committee Members,

The Hawai'i Forest Industry Association (HFIA) is a state-wide association of landowners, woodworkers, forest professionals and concerned citizens working toward healthier and more productive forests across the state of Hawaii. On behalf of the Directors and members of the Hawai'i Forest Industry Association, please support SB3360 SD2.

Hawaii's unique need to diversify its energy and fuel resources moving forward in order to combat a warming climate can also be viewed as an opportunity. Before us we have the opportunity to harness and utilize various forms of renewable energies and fuels and energy. The HFIA is particularly interested in and supportive of incentivizing the utilization of invasive, woody weeds and sawmill waste to create clean energy (meanwhile, replanting harvested areas with high carbon sequestering species).

The Hawaii Forest Industry Association is in support of incentivizing local renewable fuel production and extending the credit period and increasing the credits allowed. HFIA supports SB3360 SD2.

Mahalo,

Guy Cellier, President  
Hawai'i Forest Industry Association

*Established in 1989, HFIA's is a nonprofit organization founded by people committed to sustainable forest management. HFIA's mission is to promote healthy and productive forests and a sustainable forest industry through management, education, planning, information exchange, and advocacy. HFIA has over 130 members including woodworkers, landowners, sawyers, foundations, foresters, growers, educators, environmentalists, architects, millers, ranchers, and others interested in HFIA's mission and goals.*

**HFIA Board of Directors**

Officers: President Guy Cellier, Vice President Irene Sprecher, Secretary Taylor Coons, Treasurer Wade Lee  
Directors: Jeremy Campbell, Aaron Hammer, Nicholas Koch, Michael Sowards, Aileen Yeh



**March 18, 2024**

**TESTIMONY ON SB 3360  
RELATING TO RENEWABLE FUEL**

COMMITTEE ON ENERGY & ENVIRONMENTAL PROTECTION

Rep. Nicole E. Lowen, Chair  
Rep. Elle Cochran, Vice Chair

Conference Room 325  
State Capitol  
415 South Beretania Street

Dear Chair Lowen, Vice Chair Cochran, and Members of the Committee:

Thank you for the opportunity to provide comments on SB 3360, Relating to Renewable Fuel. Airlines for America<sup>®</sup> (A4A) is the principal trade and service organization of the U.S. airline industry<sup>1</sup>. A4A and its members have a strong climate change record and are committed to working across the aviation industry and with government leaders in a positive partnership to achieve net-zero carbon emissions by 2050, which parallels the Biden administration's goal to achieve net-zero greenhouse gas emissions in the aviation sector by 2050.

Airlines, governments and other aviation stakeholders have recognized that achieving net-zero aviation emissions by 2050 will require a very rapid transition from conventional (fossil) jet fuel to sustainable aviation fuel (SAF). SAF is a drop-in fuel, meaning that it works with existing aircraft engines, pipelines, and storage infrastructure, as long as it is blended up to 50% with conventional jet fuel and qualified to the relevant ASTM standards for alternative jet fuel. Work is underway to approve uses up to 100% SAF. SAF can bring meaningful reductions in aviation carbon emissions, reducing lifecycle emissions intensity of fuel up to 80% compared to conventional jet fuel today, with future pathways having potential for 100% reductions.

The primary impediment to rapid scale up of SAF production capacity remains the relative cost to jet fuel buyers of SAF compared to conventional jet fuel, and the relative cost of production of SAF compared to Renewable Diesel (RD)<sup>2</sup>. SAF is typically produced at the same production facilities as RD, but because the production economics of RD are more favorable, RD production volumes are substantially higher. Incentives such as tax credits that provide more

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<sup>1</sup> A4A's members are: Alaska Airlines, Inc.; American Airlines Group Inc.; Atlas Air, Inc.; Delta Air Lines, Inc.; Federal Express Corporation; Hawaiian Airlines, Inc.; JetBlue Airways Corp.; Southwest Airlines Co.; United Airlines Holdings, Inc.; and United Parcel Service Co. Air Canada, Inc. is an associate member.

<sup>2</sup> Note that Renewable Diesel and Biodiesel are not the same fuels. Neither Renewable Diesel or Biodiesel can be used in aircraft. However, SAF, RD, and Biodiesel can utilize same or similar feedstocks.



value to SAF are one way to increase SAF production and use. Conversely, tax credits that provide more value to RD than SAF will further inhibit SAF production.

Achieving this rapid transition to SAF requires industry and government to work in partnership, at both the federal and state levels, to expand SAF production capacity across the country. A4A and our members strongly support tax incentives – in particular the SAF Blenders Tax Credit (BTC) – needed to catalyze SAF production. The Biden administration also strongly advocated for the enactment of these kinds of incentives, and we are thankful for the critical support the administration provided to ensure enactment of the SAF-BTC and Clean Fuels Production Credit (CFPC) – as well as other tax incentives like the Clean Hydrogen Credit – that will provide support vital to successfully engendering exponential growth in domestic SAF production through 2030.

Ensuring the sustainability and environmental integrity of feedstocks and the production technology pathways is critical to the continued recognition and acceptance of SAF to achieve the carbon emissions reduction ambitions of aviation. We support establishing strong and robust sustainability and technical requirements based on objective criteria and the latest scientific research. A4A and its members are feedstock and technology neutral for SAF production, we firmly believe that any production pathway that can meet robust technical and sustainability requirements should be eligible for incentive programs, such as this proposal.

A4A and our member airlines value our partnership with the State of Hawai'i and believe there is a unique opportunity to jointly develop a market for cost competitive SAF. Thank you for your consideration of our feedback. Please do not hesitate to contact us if you have any questions.

Sincerely,

A handwritten signature in blue ink, appearing to read 'Sean Williams', is positioned below the 'Sincerely,' text.

Sean Williams  
Vice President, State and Local Government Affairs  
[swilliams@airlines.org](mailto:swilliams@airlines.org)



March 19, 2024

**TESTIMONY IN SUPPORT WITH AMENDMENTS ON SB 3360, SD1  
RELATING TO RENEWABLE FUELS**

House Committee on Energy and Environmental Protection (EEP)  
The Honorable Nicole E. Lowen, Chair  
The Honorable Elle Cochran, Vice Chair

Tuesday, March 19, 2024, 10:00 AM  
Conference Room 325 & Videoconference  
Hawaii State Capitol; 415 South Beretania Street

Chair Lowen, Vice Chair Cochran, and members of the Committee,

Thank you for the opportunity to provide testimony in **support with amendments** on SB 3360, SD1, Relating to Renewable Fuels.

Par Hawaii would prefer HB 2767, HD1 which establish incentives for local production of renewable fuels in Hawaii including Sustainable Aviation Fuel (SAF).

Transportation emissions account for over 50% of Hawaii's GHG emissions.<sup>1</sup> Electrifying the vehicle fleet will reduce emissions as the electric grid becomes greener. However, there are limited options available to address emissions with trucks and other heavy-duty vehicles. The aviation sector faces particular challenges.

States on the US West Coast have started to address these challenges by introducing incentives for the use of low carbon fuels. In California, as reported by the California Air Resources Board, over 50% of diesel demand is now met by Renewable Diesel (RD). RD is a low-carbon fuel produced by processing used cooking oil, animal fats and vegetable oils. Similarly, there are small but growing volumes of renewable fuels for the aviation sector. This product is called Sustainable Aviation Fuel (SAF), and it is produced in a similar process and from the same feedstocks as RD<sup>2</sup>.

These liquid renewable fuels are critical to meeting Hawaii's clean energy goals. This was a key finding in the recent Act 238 Hawaii Decarbonization Pathway Study which calls for

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<sup>1</sup> [https://health.hawaii.gov/cab/files/2023/05/2005-2018-2019-Inventory\\_Final-Report\\_rev2.pdf](https://health.hawaii.gov/cab/files/2023/05/2005-2018-2019-Inventory_Final-Report_rev2.pdf) (Pages 26-27 document Transportation sector emissions of 10.68 MT of CO2 equivalent in the most recent reporting period of 2019. Total net emissions were 19.42 MT CO2 equivalent.)

<sup>2</sup> RD and SAF are produced from the same feedstocks as biodiesel but have superior properties including serving as drop-in replacements for traditional diesel and jet fuel.



RD and SAF to be a significant part of Hawaii's fuel supply beginning later this decade. See the chart in Appendix A.

The good news is that Par Hawaii, Hawaiian Airlines, Pono Pacific, and input from a broad range of stakeholders, are stepping up to meet the need for renewable fuels. However, the cost to produce these fuels is significantly higher than the cost of fossil fuels, and additional financial incentives are required to initiate and sustain the production of these fuels. States on the US West Coast have had success in bringing renewable fuels to the market, but it has required state-level financial incentives of up to \$1.00-2.00 per gallon. Without action, these desirable renewable fuels will be produced and delivered to other markets including the West Coast.

**While SB 3360, SD1 has many elements that support local production of renewable fuels, HB 2767, HD1 is preferred.**

Mahalo for allowing Par Hawaii to testify.

Appendix A

Act 238 Hawaii Decarbonization Pathway Study

- December 2023 Act 238 Pathways to Decarbonization Study modeled 3 scenarios
- **Study finds that renewable liquid fuels are critical to Hawaii reaching it's decarbonization goals**
- Recommends an expansion of renewable fuels production tax credit

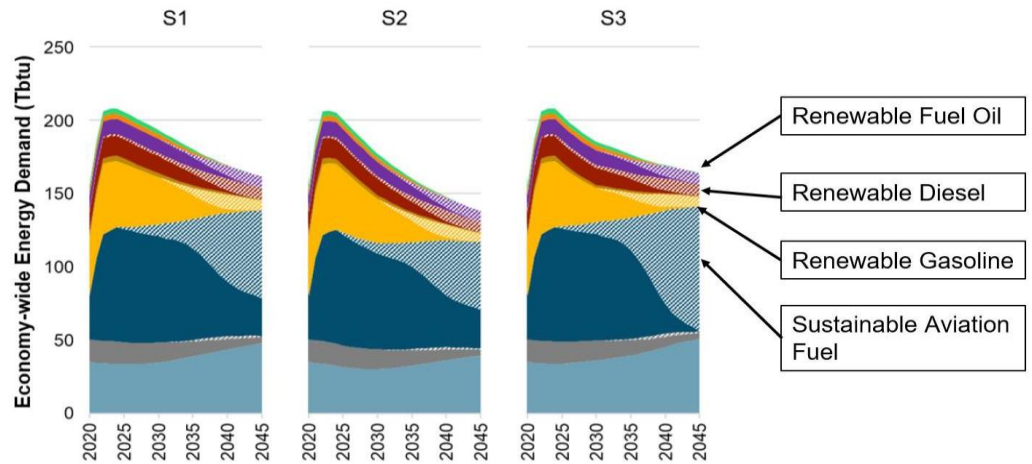


Figure 54 Economywide energy demand from 2020 through 2045 (excludes fuels combusted for electricity generation)



March 19, 2024

**TESTIMONY ON SB 3360 SD1  
RELATING TO RENEWABLE FUEL**

House Committee on Energy & Environmental Protection  
The Honorable Nicole E. Lowen, Chair  
The Honorable Elle Cochran, Vice Chair

March 19, 2024, 10:00am  
Conference Room 325  
State Capitol 415 South Beretania Street

Chair Lowen, Vice Chair Cochran, and members of the Committee,

Thank you for the opportunity to provide comments on SB 3360 SD1, Relating to Renewable Fuel.

This bill expands on the renewable fuels production tax credit with a higher base credit value, incremental value for locally produced or recycled feedstock, and the elimination of the restrictive \$3.5 million cap per producer. While we are supportive of these changes, we believe the bill should be amended to address several items, the most important of which is the need to provide incremental value for sustainable aviation fuel (SAF) compared to renewable diesel (RD), in order to close the relative margin gap between RD and SAF. Without this incremental value, producers will not have incentive to produce SAF, and there is risk that aviation emissions, which comprise approximately half of Hawaii's transportation emissions, will not be addressed with this tax credit.

Aviation emissions represent a very small part of overall global carbon emissions. Nonetheless, aviation represents a higher proportion of Hawaii's fossil fuel usage, given our unique dependence on air transportation and relatively limited utilization of road fuel. Within Hawaii, it is worth noting that aviation fuel usage is driven predominantly (estimated about 90%) by long-haul travel; with its short flight distances, the intrastate flying on which our community depends drives relatively little fuel consumption. In order to address the existential threat of human-caused climate change, airlines in the U.S. have all committed to reach net-zero in the decades to come.

Sustainable aviation fuel (SAF) is widely viewed as the most promising technology to advance aviation decarbonization. The U.S. airline industry has pledged to work with government leaders and other stakeholders to make 3 billion gallons of cost-competitive SAF available to U.S. aircraft operators in 2030. SAF is a drop-in fuel, meaning that it is certified for use in existing aircraft engines, pipelines, and storage infrastructure, as long as it is blended up to 50% with conventional jet fuel. SAF can bring meaningful reductions in aviation carbon emissions, with lifecycle emissions intensity up to 50 to 80% lower than conventional jet fuel.

While SB 3360 SD1 has many elements that support production of renewable fuels, it should be amended to address several important items:

- Similar to the House version of this bill, HB 2767 HD2, include an additional \$1.00 per gallon if the renewable fuel is SAF. This additional value for SAF is needed in order to 'level the playing field' between SAF and renewable diesel (RD). SAF is currently inherently less



profitable for producers than RD for a number of reasons: RD has a higher physical fuel value, higher yield, lower infrastructure costs and more revenue from certain federal programs. For these reasons, additional value is needed for SAF in order to ensure some production volume is allocated to SAF.

Proposed amendment to Pg 3, lines 10 to 13:

~~provided further that there shall be an additional credit of \$1.00 per gallon for renewable fuels produced with lifecycle greenhouse gas emissions at least seventy-five per cent below that of fossil fuels;~~  
provided further that there shall be an additional credit of \$1 per gallon for the production of sustainable aviation fuel;

- Include a lifecycle greenhouse gas emissions intensity reduction threshold that must be met in order to qualify for the base tax credit. Currently, the base credit value can be obtained as long as the fuel has 'lifecycle emissions below that of fossil fuels.' We believe the base value should only be available if the carbon intensity meets an acceptable threshold.

Proposed amendment to Pg 3, lines 14 to 15:

provided further that the tax credit shall only be claimed for fuels with lifecycle emissions at least [ ] per cent below that of fossil fuels;

Proposed amendment to Pg 4, lines 18 to 21 through Pg 5, lines 1 to 3:

(3) Provide the taxpayer with a determination of whether the lifecycle greenhouse gas emissions for each type of qualified fuel produced is at least [ ] per cent lower than that of fossil fuels~~[-] and whether the lifecycle greenhouse gas emissions for each type of qualified fuel produced is seventy-five per cent lower than that of fossil fuels.~~

- Modify "first come, first served" mechanism to a pro-rated model to enable more equitable distribution of the credit among multiple producers/importers.

Proposed amendment to Pg 5, lines 10 through 17:

shall be ~~divided between all~~ allocated proportionally to each eligible taxpayer for that year in proportion to the total amount of eligible renewable fuels produced by all eligible taxpayers tax credit claims under this section for this calendar year. Upon reaching ~~[\$20,000,000]~~ \$\_\_\_\_\_ in the aggregate, the Hawaii state energy office shall immediately discontinue issuing certificates and notify the department of taxation. In



no instance shall the total dollar amount of certificates issued exceed [~~\$20,000,000~~] \$ \_\_\_\_\_ per calendar year.

- While we understand the current State budget realities, we believe for this tax incentive to be effective at spurring economic development, expanding supply of renewable fuels, and making progress toward the state's decarbonization goals, the amount of the aggregate annual cap and the length of the term need to be sufficient to stimulate investment and competition in the market and support the significant volumes of renewable fuels that will be needed to decarbonize our economy in Hawaii.

Without these modifications, there is reasonable concern that the bill as proposed will not drive the incremental production, importation and uptake of biofuels needed to materially contribute to the state's decarbonization goals.

Mahalo,

Alanna James  
Managing Director, Sustainability Initiatives  
Hawaiian Airlines



March 18, 2024

**TESTIMONY IN SUPPORT OF SB 3360 SD1  
RELATING TO RENEWABLE FUEL**

House Committee on Energy and Environmental Protection (EEP)  
The Honorable Nicole E. Lowen, Chair  
The Honorable Elle Cochran, Vice Chair

March 19, 2024, 10:00 am  
House Conference Room 325  
State Capitol 415 South Beretania Street

Chair Lowen and Vice Chair Cochran, and members of the Committee,

Thank you for the opportunity to provide testimony in SUPPORT of SB 3360 SD1; however, we believe HB 2767, HD1, which includes incentives for the production of Sustainable Aviation Fuel (SAF), is preferable.

Pono Pacific is the state leader in land management with nearly 25 years of experience across the Hawaiian Islands with an emphasis on conservation lands, agriculture, and renewable energy. Pono Pacific has partnered with Par to develop a supply of locally grown feedstocks for biofuel production. Locally grown feedstocks will provide farmers with a viable economic commodity to supply the refinery and help put idle lands to work.

Finding viable uses for agriculture lands that will encourage sustainability in our environment and that produce positive economic cash flow for Hawaii is a critical need. Locally grown biofuel feedstocks offer significant benefits for our farmers. These cover crops can be used in rotation with food production and can also thrive on marginal land, improving soil health and reducing erosion. They require less water and fertilizer than traditional row crops. By creating a demand for these crops, the renewable fuels industry can revitalize rural communities, create new jobs, and diversify farm income streams.

Growing biofuel feedstocks locally helps to create new agricultural jobs, encourage food production through infrastructure synergies, and does not compete with food crops when using oil seed cover crops. Pono Pacific believes these feedstocks will be able to provide a quality biofuel product and usable byproducts (such as animal feed) to help support





Hawaii's sustainability goals, and agricultural, ranching and dairy sectors of the local economy.

The production and distribution of renewable fuels, including SAF, is not just about farms; it is about building a robust green energy infrastructure within our state. From biofuel refineries to logistics companies, the entire chain creates high-paying jobs, attracts investment, and boosts Hawaii's overall economic output. Investing in local SAF production positions us as a leader in the burgeoning clean aviation fuel market, attracting further investment and innovation. These incentives will empower us to cultivate energy independence, foster economic growth, and create a sustainable future for our islands. Incentives and credits, therefore, are not a perpetual need but a bridge to get biofuel production to maturity and scale when it can compete successfully against traditional petroleum-based fuels.

We urge you to amend this legislation to include SAF, or in the alternative, we prefer the passage of HB 2767, HD1. Thank you for your time and consideration.

Mahalo,

Chris Bennett  
Vice President of Sustainable Energy Solutions  
Pono Pacific Land Management, LLC



P.O. Box 1459  
Kahului, Hawaii 96733  
Phone (808) 877-3144  
Fax (808) 877-5030  
www.biodiesel.com

March 18, 2024

TESTIMONY ON SB 3360 SD1, RELATING TO RENEWABLE FUEL

SUPPORT

Rep. Nicole E. Lowen, Chair  
Rep. Elle Cochran, Vice Chair  
Committee on Energy & Environmental Protection  
Hearing: March 19, 2024, at 10AM, Conf Room 325

Aloha Chair Lowen, Vice Chair Cochran, and Members of the Committee,

Pacific Biodiesel supports SB 3360 SD1 which updates the renewable fuels production tax credit and incentives increased production of Firm Renewable Energy.

The bill has widespread support from:

- (1) Farmers who will benefit from incentives for locally grown cover crops used to produce 2<sup>nd</sup> Generation Biofuels.
- (2) Environmentalists that understand 2<sup>nd</sup> Generation Advanced Biodiesel reduces greenhouse gas emissions by 85% compared to its fossil fuel equivalent.
- (3) Public Utilities that require more firm renewable energy to meet the 100% renewable energy mandate by 2045.
- (4) Biofuel Producers that are ready to make new investments to increase production that require long term planning and financing.

## I. Suggested amendment to version that EEP previously passed.

- A. Address concerns by the Attorney General by strengthening the legislative purpose for the section incentivizing production from local feedstock by including the following statement:

A goal of this legislation is to address Hawaii's well-established health and safety concerns related to sea level rise, ozone layer depletion, and global warming. Another important goal of this provision is to keep waste cooking oil out of our sewer pipes and landfills by incentivizing recycling used cooking oil. Finally, promoting the use of cover crops on our farms and farrow lands is an important aspect of land management that helps prevent wildfires while healing our land from overuse and monocropping.

## II. Bill highlights.

*renewable* • *sustainable* • *community-based*

- A. New investments are needed to incentivize existing producers to increase production of firm renewable energy and to encourage new producers to begin production. The production tax credit gives a very important incentive to invest further in firm renewable fuel production in Hawaii. Past investments in the renewable fuels production tax credit succeeded in promoting local investments in cleaner fuels and moving us closer to energy independence and security. Continuing this credit sends the correct signal for new and continued investments in this firm renewable energy.
- Amends Subsection 235-110.32(a), Hawaii Revised Statutes, to raise the tax credit from 20 cents to 35 cents per seventy-six thousand British thermal units of renewable fuels using the lower heating value sold for distribution in the State.
  - Amends Subsection 235-110.32(f), Hawaii Revised Statutes, to raise the total amount of tax credits allowed under this section from \$20,000,000 to \$80,000,000.
  - Amend Subsection 235-110.32(a), Hawaii Revised Statutes, to provided that taxpayers who have previously claimed credits under this chapter shall be reset for tax years beginning after December 31, 2023.
- B. We believe that increased incentives must be justified by increased benefits to the State. Therefore, we support the creation of a tiered system of tax credits that incentivizes: 1) renewable fuels produced from renewable feedstock **locally grown or recycled in the State of Hawaii** and 2) renewable fuels produced with lifecycle greenhouse gas emissions at least **75% below that of fossil fuels.**
- Amends Subsection 235-110.32(a), Hawaii Revised Statutes, to provide an additional credit value of \$1.00 per gallon for renewable fuels produced from renewable feedstock locally grown or recycled in the State of Hawaii.
  - Amends Subsection 235-110.32(a), Hawaii Revised Statutes, to provide an additional credit value of \$1.00 per gallon for renewable fuels produced with lifecycle greenhouse gas emissions at least 75 per cent below that of fossil fuels.
- C. A 20-year plan ensures that Hawaii’s firm energy needs can be met with firm renewable energy by 2045. To ensure sustainable inventories of locally sourced firm renewable energy for electric utility companies' renewable portfolio standards, long term planning that includes incentives, are essential for investment and development of locally sourced firm, renewable energy production. With twenty years remaining to reach the mandate that one hundred percent of our electricity be generated by renewable sources of energy by 2045, **we must update the renewable fuels production tax credit with a 20-year plan to ensure that our firm energy needs can be met with renewable firm energy by 2045.** The Hawaii State Energy Office agrees that the 10-year period should be expanded to 20 years or removed entirely.
- Amend Subsection 235-110.32(o), Hawaii Revised Statutes, to define the credit period as twenty consecutive years instead of ten consecutive years.
- D. The individual cap should be raised to encourage increased production while also protecting smaller producers.
- Amend Subsection 235-110.32(a), Hawaii Revised Statutes, to change the individual tax credit limit from \$3,500,000 to 75% of the total tax credit amount.

### **III. Response to issues raised by the Attorney General in previous testimony regarding locally grown feedstock.**

- A. Growing biofuel feedstocks locally is widely supported by farmers because it helps to create new agricultural jobs, encourages healthier soils resulting in increased food production, and does not compete with food crops when using oil seed cover crops. The proposed tax incentives for local renewable fuel production are not just an economic stimulus package; they represent a strategic investment in Hawaii's future.
- B. We appreciate the Attorney General's concern regarding incentives related to local feedstock and the commerce clause. However, we believe the proposed law could stand up to the increased scrutiny due to health and safety concerns related to the climate crisis this bill seeks to address. The history of commerce clause jurisprudence evidences a distinct difference in approach where the state is seeking to exercise its public health and safety powers, on the one hand, as opposed to attempting to regulate the flow of commerce. Hawaii has well established health and safety concerns related to sea level rise, ozone layer depletion, and global warming. Another goal of this provision is to keep waste cooking oil out of our sewer pipes and landfills by incentivizing recycling used cooking oil. Finally, promoting the use of cover crops on our farms and farrow lands is an important aspect of land management that helps prevent wildfires and while healing our land from overuse and monocropping.
- C. The unique combination of Hawaii's energy vulnerability, limited renewable options, and the minimal impact of the tax credit on interstate commerce, coupled with its substantial local benefits and alignment with national goals, also provides a compelling case for upholding its legality under the Commerce Clause. (see testimony from Pono Pacific who analyze the commerce clause issue thoroughly).
- D. A simple solution to the Attorney General's concern may be to expressly mention these concerns as a justification for the bill.

### **IV. Major investments are needed in firm renewable energy to meet Hawaii's mandate to reach 100% renewable energy by 2045.**

- A. Hawaii's utility companies rely on and need more of Pacific Biodiesel's locally produced firm renewable energy. HRS section 269-92(a) requires each electric utility company that sells electricity for consumption in the State to establish a renewable portfolio standard of forty percent of its net electricity sales by December 31, 2030, seventy percent of its net electricity sales by December 31, 2040, and one hundred percent of its net electricity sales by December 31, 2045. In order for electric utility companies to meet the required renewable portfolio standards by 2045, an indispensable component of the electric utility companies' renewable portfolio standard must include sufficient locally sourced firm renewable energy sources to offset the intermittent nature of wind and solar power renewable energy.

- B. Speaking for the liquid biofuels industry, it is well known that the cost to move from 70% to 100% renewables will be extremely expensive using any other technology. Biodiesel can cost effectively optimize battery sizing by providing firm renewable power, quickly dispatched at any time. Fast-start, efficient diesel engines – when fueled with clean biodiesel – are enabling higher penetration of intermittent PV and wind assets while maintaining grid stability. Biodiesel allows for an immediate reduction of greenhouse gas emissions. Our biodiesel is a 100% renewable Advanced Biofuel that is a crucially important firm renewable power source in Hawaii to back up other renewables on the grid. And, more importantly now than ever, Hawaii’s locally produced biodiesel is supporting energy security in our island state and reducing reliance on imported fossil fuel. **It is a direct replacement for petroleum diesel fuel that can be used right now in any diesel engine without modification, helping to reduce greenhouse gas emissions by 86% compared to petroleum diesel.** The diesel engine is NOT the problem. Petroleum diesel FUEL – fossil fuel – used in efficient diesel engines is the problem. **Biodiesel has one of the lowest carbon footprints of any fuel.** A California Air Resources Board (CARB) report\* shared findings that total greenhouse gas (GHG) reductions from biomass-based diesel were three times the total reductions from electric vehicles. In Hawaii, where the carbon intensity of our electricity grid is significantly higher than the US average, the assumption would be an even greater GHG reduction with the use of 100% biodiesel compared to EVs charged by an electricity grid that is currently only 30% powered by renewables.
- C. Unfortunately, Hawaii is rushing to support electrification while ignoring the many environmental and economic benefits of biofuels. We cannot and should not sit back and wait for a 100% zero emission future. The State must get serious, soon, about requiring a lifecycle GHG reduction analysis on its “zero emission” strategies before Hawaii spends millions on electrification.

Our locally produced 2<sup>nd</sup> Generation biodiesel is produced from recycled used cooking oil from Hawaii and recycled used cooking oil from the mainland. Increasing production using locally grown or recycled feedstock is our goal, and that goal is becoming reality at our new project on Kauai. Pacific Biodiesel and other companies need this incentive to increase local production with from local feedstock over the next 20 years. That is how we achieve energy independence.

The further we move towards our goal of 100% renewable, the more critical firm energy like liquid biofuel sources will be. At Pacific Biodiesel’s refinery on Hawaii Island, we produce 6 million gallons per year of premium distilled biodiesel – the equivalent of 220 MWh per DAY of 100% renewable energy for Hawaii. **But, building up the supply is a long process. We must accelerate implementation and support additional local production now to meet expanding demand in the future and to ensure that our firm energy needs can be met with firm renewable energy by 2045.**

Pacific Biodiesel

Testimony - SUPPORT SB 3360 SD1

March 18, 2024

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Mahalo,

Sincerely,

A handwritten signature in black ink that reads "Robert A. King". The signature is written in a cursive style with a large, stylized initial 'R'.

Robert A. King, President  
Pacific Biodiesel Technologies, LLC

**SB-3360-SD-1**

Submitted on: 3/18/2024 8:55:58 AM

Testimony for EEP on 3/19/2024 10:00:00 AM

Submitted By	Organization	Testifier Position	Testify
Noel Morin	Individual	Support	Written Testimony Only

Comments:

Dear Chair Lowen, Vice-Chair Cochran, and Committee members,

I support this SB 3360 SD1.

Our journey to a resilient and sustainable future demands several solutions. There isn't one silver bullet to address our energy-related challenges (emissions, dependence imports, environmental pollution, and energy equity).

Biofuels can serve as transitional and even ultimate solutions for use cases that are challenging or impossible to electrify. They also offer a means to accelerate the transition of our electricity production away from fossil fuels. Some use cases:

- Back-up energy generation such as [KIUC's efforts](#).
- Sustainable aviation fuel
- Liquid fuels for existing heavy assets that still have utility. These don't have to be stranded assets, can deliver value, and help avoid premature depreciation (waste).

This measure will create incentives to expand a new industry, which will benefit our people, economy, and the environment.

Thank you,  
Noel Morin  
Climate, Sustainability, and Resilience Advocate  
Hilo, Hawaii

**SB-3360-SD-1**

Submitted on: 3/18/2024 9:18:09 AM

Testimony for EEP on 3/19/2024 10:00:00 AM

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Testify</b>
Glen Kagamida	Individual	Support	Written Testimony Only

Comments:

STRONG SUPPORT!

MAHALO!



HOUSE OF REPRESENTATIVES  
THE THIRTY-SECOND LEGISLATURE  
REGULAR SESSION OF 2024

COMMITTEE ON ENERGY & ENVIRONMENTAL PROTECTION

Rep. Nicole E. Lowen, Chair  
Rep. Elle Cochran, Vice Chair

Rep. Cedric Asuega Gates                      Rep. Justin H. Woodson  
Rep. Kirstin Kahaloa                              Rep. Gene Ward  
Rep. Amy A. Perruso

HEARING: Renewable Fuel Production Tax Credit Bill (SB3360-SD1)

DATE: Tuesday, March 19, 2024  
TIME: 10:00am  
PLACE: Via Video Conference, and  
Conference Room 325  
State Capitol  
415 South Beretania Street

Dear Chair Lowen and Representatives of House Committee on EPP,

Neither the Renewable Fuel Production Tax Credit Bill (SB3360\_SD1) nor its companion bill (HB2767\_HB2) should be adopted by the State legislature, because they are well-disguised special interest bills, which only benefit the recipients of the tax credits (Par Hawaii Refining and Pacific Biodiesel Technologies) and will not have the intended broader effect of ensuring local production, or lowering the costs of renewable fuels in Hawaii.

The Senate's version of the bill (SB3360\_SD1) retains the second tier supplemental tax credit of \$1 per gallon for renewable fuels that reduce greenhouse emissions by 75%, whereas HB2767\_HB2 rejects the extra \$1/gal for 2<sup>nd</sup> tier (75%). In somewhat of departure from its original premise of supporting the use of renewable fuel by utilities HB2767\_HD2 has (at the request of its primary benefactors) been amended to include an additional \$1/gal tax credit for renewable jet fuel, also known as Sustainable Aviation Fuel (SAF). Notably the Hawaii State Energy Office provided testimony that the compounding and special tax credit for SAF could be considered excessive and unfair.<sup>1</sup>

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<sup>1</sup>"HSEO understands that there will be substantial demand for sustainable aviation fuel; however, granting sustainable aviation fuel an additional credit of potentially two dollars per gallon is extensive, and could compete unfairly for the tax credit based on the volume of fuel needed for aviation and the tax credit cap, which is set-up to be allocated to each eligible taxpayers for each given year in proportion to the total amount of renewable fuels produced."

The proposed bills could cost the State between \$ 60 – \$100 MM per year in foregone tax revenues and potentially even more if the fuel production tax credit is further expanded in future years to accommodate the growing demand for renewable fuel. Moreover as drafted the bill(s) would force the State make direct monetary distributions (in the form of the refundable tax credits) to those companies which qualify for renewable production tax credits in excess of their respective State income tax liability. Coupled with the generous and newly-proposed 75% recovery allowance, the proposed tax credits are so robust and the State's demand for renewable fuels so high, claims for the production credits will readily exceed their net income tax liability. A few select companies would be entitled to a direct multi-million dollar payout over the next 20 years if not longer.<sup>2</sup>

The proposed bill be deferred and more time should be taken to allow greater evaluation of the massive expansion of renewable fuel production tax credits because (in addition to its potentially huge price tag), the bill embodies a host of defects and short-comings.

1. Only manufacturers of the renewable fuels (Par Hawaii Refining and Pacific Biodiesel and potentially new entrants) will qualify for the production tax credits. There is no assurance (nor sufficient incentive) that any local farmers or collection efforts would directly benefit from the tax credit. At most, there will be a slight increase in demand for local sources of renewable feedstocks but those trickle-down incentives will be inadequate for the amount renewable fuel that the State needs or could be reasonably produced in Hawaii. The State (DBEDT) has already authorized and Par Hawaii Refinery is planning to import soybean oil and other renewable feedstocks into the Foreign Trade Zone (FTZ) from foreign countries, such as Brazil.
2. Both bills propose \$1/gallon for renewable feedstocks which are locally produced, even though the AG has repeatedly questioned the legality of such a provision. Likewise, the Hawaii's State's Energy Office provided testimony that the proposed increase of \$1/ gallon is too much and the tax credit for local production should be limited to an extra \$.20 cents per 76 million BTU.
3. Neither bill provides a tax credit for the importation of renewable fuels or feedstocks which will be critical for the State to reach it goals for renewable fuels, particularly for sustainable aviation/jet fuel (SAF). According to DBEDT with just one operating refinery, the State imported more 405 MM gallons of jet fuel produced from fossil fuel in 2022. The preferential tax treatment afforded in-state production, generally undermines competition in the supply of renewable fuel to the State, which will artificially raise the cost of renewable fuels available in the State.
4. There is no assurance that the public subsidy for producing renewable fuels in State will be passed on to end-users, such as the utility companies and the airlines or Hawaii drivers. While both HECO and the airlines are in support of the bill, it is only because they are hopefully that with the State's subsidy, that they will not have to pay (Par Hawaii Refining and PBT) as much for the renewable fuel. However there is no assurance (and little likelihood) that the benefits of the manufactures tax credits will be passed to end-users in form of lower prices.

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<sup>2</sup> According to DOTAX in 2022 income tax from all companies operating in Hawaii total \$281 MM. The State income tax liability for manufacturers of renewable fuel tax credits is certain to be just a small fraction of this amount and readily exceed by the Renewable Fuel Production Credit

5. The notion and chief appeal of the bill is that encourages local development of agriculture interests and reduces Hawaii's reliance on foreign or domestic imports is merely a façade, design to ensure the bills' passage. In 2022 less than 1% of the diesel fuel purchased by Hawaii utilities was acquired from Pacific Biodiesel and about 60% of use cooking oil feedstock was imported from out-of-state. Even with exceptional growth, Pacific Biodiesel has little realistic ability to produce (in-State) the amount of renewable fuel that will be needed. Similarly, in response to questioning by Senator DeCoite on HB2767 Pono Pacific who is working with Par Hawaii Refinery to produce renewable feedstock was unable to immediately provide even an estimate of the yield from its highly-publicized field trials which have been on-going for over a year. Despite the promising pretext, on April 27th, 2023 Par Hawaii had already announced that most of the renewable feedstock will be imported into the FTZ and used to make 61 MM gallons per year of renewable fuel. And that reality is unlikely to change in the future because of limited land resources and scale disparities which make it difficult for Hawaii to compete. The relevance and limited viability for renewable feedstocks to be produced locally in Hawaii was clearly conveyed in testimony provided by Island Energy Services (IES).<sup>3</sup>
6. Given the Renewable Portfolio Standards, providing a broad-based public subsidy for the production of renewable fuel, distorts and undermines the development of alternative means of producing electricity within the State, unless nearly equivalent tax credit is given for other means of generating power as well.

If either of the surviving renewable fuel production tax credit bills (HB2767-HD2 or SB3360-SD1) are passed into law without key changes the bills effectively provides 20-year \$60-million-dollar tax break/subsidy for the FTZ fossil-fuel refinery to "go green". Because the State has no realistic prospect of supplying renewable feedstocks at the required scale, instead of relying upon foreign crude oil, this bill would encourage the State to become reliant on the importation of renewable feedstocks from out-of-state and would provide Par Hawaii tax credits to produce renewable fuel in the FTZ, even though there is already plenty of economic incentives (State and federal regulations) to do so.

Particularly absent any equivalent tax credit for importers of renewable fuels, there is nothing to stop Par Hawaii Refining from charging premium prices for renewable fuels and then pocketing the State's generous tax credit rather than passing those savings onto its customers and end-users (like the utilities and airlines). Why would Par Hawaii Refining voluntarily discount highly sought-after renewable fuels (such as SAF), if there is no real (or fair) competition from renewable fuel importers? Island Energy Services (IES), a leading importer of jet fuels highlighted equity concerns and the loss of competition in their testimony on these bills.

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<sup>3</sup> "Jet fuel demand in the state of Hawaii is approaching 50,000 barrels per day. In order to produce enough SAF for 10% of Hawaii's jet demand, upwards of 240,000 acres of energy-cane will be needed. The island of Oahu is 386,000 acres. Relying on locally grown or recycled feedstocks will not provide the total answer."

While subject to challenge perhaps as Par Hawaii has claimed, additional financial incentives are in fact needed from the State to ensure that any renewable fuel produced by Par in Hawaii stays in Hawaii.

Because it is true neither of the two bills provide any real assurance that Hawaii's residents or travelers would see any direct benefit from the expenditure of public funds that would be legislatively conveyed to Par Hawaii Refining in the form of robust and potentially refundable tax credits, perhaps these public funds could be more beneficially directed to in-State consumers.

To ensure the public subsidy for the renewable fuels has a broader impact, let the airlines or utilities claim an income tax credit for the acquisition and use of renewable fuels. Hawaii's airlines and utilities are far more deserving, and they could use the tax credits or other public subsidies to ease the transition to renewable fuels. Airlines in particular, could use an additional credit to incentivize them to buy SAF in Hawaii, instead of traditional fossil fuels because there is no absolute mandate (as there is for the utilities) to use renewable fuel. Moreover, (without significant expansion) Par Hawaii Refining cannot possibly produce all of the SAF that will be needed, consequently renewable jet fuel will have to be imported into the State, by companies such as IES, who will be operating at competitive disadvantage.

Both surviving bills only offer a tax credit for production but not for the importation of renewable fuels and because there is only one refinery remaining, Par Hawaii Refining will be the biggest benefactor of the renewable fuel production tax credit. Par Hawaii Refining is the State's only manufacturer of jet fuel and gasoline and the State's largest producer for utility fuels (by more than an order magnitude).

As reflected in Par Pacific's press release most of the renewable feedstock for the production facility will be imported. Fundamentally foreign feedstocks will be used because (even with a supplemental tax credit for Hawaii's farmers), the imported oil seed feedstocks will be cheaper and because of land and water constraints Hawaii will not be able to supply even a small percent (<10%) of the renewable feedstocks that will be needed. Imported renewable feedstocks from countries such as Brazil and Argentina are cheaper and will remain favored over Hawaii-grown feedstocks because of existing infrastructure advantages and because Par Hawaii Refining has already secured authorization from the Foreign Trade Zone Board on December 28, 2022, to import renewable feedstocks such as soybean oil, essentially duty free.<sup>4</sup>

And yet based on testimony by Pono Pacific, The Hawaii Farm Bureau and the Airlines, the State legislature is being intentionally led to believe the renewable fuel will be produced from local feedstocks and is being pressured to give Par Hawaii Refining a huge (potentially \$34 - \$95 MM) tax credit for next 20 years to produce renewable fuels in Hawaii.

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<sup>4</sup> Subject to legal interpretation Par Hawaii may be required to import renewable feedstocks such as soybean oil from US domestic sources, in order to qualify its renewable production facility for federal tax credits under U.S. Code Title 26, Section 45Z which was intended for domestic production, but does not specifically bar foreign feedstocks.

The prospect or possibility of locally supplied feedstocks is the reason why there is sliding scale tax credit for renewable fuels produced in Hawaii but no (zero) tax credit for renewable fuels that are imported into Hawaii. However, the hope of local supply is a false (or grossly exaggerated) premise which creates a harmful inequity, for which the State's AG has repeatedly cautioned. The State's AG has advocated for deletion of language that was subject to challenge based on the commerce clause of the US constitution.

As currently drafted both bills provide principally Pacific Biodiesel (PBD) and Par Hawaii Refining an additional \$1/gal, for renewable fuels which are produced from locally grown or collect feedstock, bringing the total value of the tax credit of between \$0.56 and \$2.56 (for SAF). However, to some degree the preferential State tax credit for locally grown and produce renewable fuels, proposed State bills (HB2767 and SB3360) is somewhat redundant and is not really necessary because there is also robust a federal production tax credit provided under U.S. Code Title 26, Section 45Z which will go into effect on January 1<sup>st</sup>, 2025 and will provide additional incentives (tax credits) to produce renewable fuels domestically in the US. And because it applies nation-wide that federal tax credit would not be subject to challenge under the commerce clause.

The cost or cap on of both bills was projected initially to be \$60 MM per entity making a claim and a \$80 MM aggregate annual limit for all companies that would claim the State's renewable fuel production credit. Even if all the feedstock is imported into the FTZ from foreign countries, Par's Renewable Production Facility could readily consume and claim the entire tax renewable fuel credit, particularly if the extra \$1/gallon for is SAF is in the final version because the extra credit for SAF alone would equate to \$ 36 MM per year.

In consideration of all the demands for State funding, even if the legislature were to reign in the maximum size of the renewable fuel tax credit (either \$/gal or the annual caps) this year, the State will be under constant pressure to extend and increase the amount of tax credit in future years to ensure that renewable fuels that are produced in Hawaii are either consumed in Hawaii or loaded on to jets in Hawaii. The legislature should pay special attention to the warnings provided by Par Hawaii in its written testimony regarding the renewable fuel production tax credit:

*"States on the US West Coast have had success in bringing renewable fuels to the market, but it has required state-level financial incentives of up to \$1.00-2.00 per gallon. Without action, these desirable renewable fuels will be produced and delivered to other markets including the West Coast.*

*.... we believe the aggregate annual cap should be at least \$80 million."*

Because Par Hawaii pays no general excise tax or manufacturers tax on refined products (including renewable fuels) which are produced in the FTZ and shipped out-of-state (pursuant to HRS 237-29.5), aside from logistical complexities there are no significant extra costs incurred to transport renewable fuels (on back-haul along with traditional fossil fuels) out-of-state. In addition to avoiding State excise taxes on refined products that Par Hawaii Refining produces and ships out-of-state, or through the FTZ under (HRS

212-8), the fuel consumed in the fuel manufacturing (refining) process itself is exempt from the State's barrel tax (HRS243-3.5). As result, there is also a substantial incentive for Par Hawaii to make renewable fuel and ship it out-of-state where renewable fuel commands a higher price. If the tax credit is not large enough, Hawaii will remain at risk. Consequently, Par's stated position on the renewable fuel production tax credit should be viewed as more than an idle threat.

Par Hawaii is effectively leveraging its position to force the State to compete for renewable fuels that Par produces in Hawaii with out-of-state customers particularly airlines on the West Coast. Once a solid foothold has been established for the renewable fuel tax credit, there will be additional and on-going demands for preferential tax treatment, which will only further undermine competition (from importers) and any meaningful price constraints on renewable fuels.

The State would seem to be better off and the State would get more assurance by giving a tax exemption or tax credit to the utilities and airlines to further encourage them buy the renewable fuels, for a while - at least until the price for renewable fuel comes down over time. Those entities could buy it from Par Hawaii Refining (and Pacific Biodiesel) to ensure the renewable fuel (and the credit) stays in Hawaii and it would provide an incentive for others to produce or ship it here as well. Because of its isolation and limited farmland, Hawaii has to do something different from states on the West Coast.

More time should be allowed for other ideas to surface, before settling and locking in on a 20-year public subsidy that will guarantee Par Hawaii a windfall return (of potentially more than \$95 MM per year) on a one-time investment of \$90 MM. The Hawaii legislature should encourage or work with the utilities or airlines to draft a tax bill for renewable fuels and see how they compare to those that have been drafted and backed by Pacific Biodiesel and Par Hawaii Refining. Again, I would suggest that HB2767 and HB3360 still have some lingering support, ensure that the tax credits are designated as non-refundable, because the magnitude of the tax credits will far exceed the net State income tax liability.