COMMENTS OF
THE DEPARTMENT OF THE ATTORNEY GENERAL
TWENTY-SIXTH LEGISLATURE, 2012

ON THE FOLLOWING MEASURE:
H.B. NO. 2262, H.D. 2, S.D. 1, RELATING TO ENERGY.

BEFORE THE:
SENATE COMMITTEE ON WAYS AND MEANS

DATE: Thursday, March 29, 2012 **TIME:** 9:00 a.m.

LOCATION: State Capitol, Room 211

WRITTEN COMMENTS ONLY. For more information, call Mary Bahng Yokota, Deputy Attorney General at 586-1470.

Chair Ige and Members of the Committee:

The Department of the Attorney General (the "Department") offers the following comments on this bill.

This bill (1) amends the ethanol facility tax credit and renames the tax credit to the renewable transportation fuels production facility tax credit, (2) provides for a biofuel production facility income tax credit, and (3) requires an environmental assessment for actions that propose any oil refinery as specifically defined in the bill.

Section 235-110.3(d), Hawaii Revised Statutes, as amended by this bill, provides that, if the annual amount of certified renewable transportation fuels production income tax credit exceeds a specified amount in the aggregate, "the department of business, economic development, and tourism may immediately discontinue certifying credits and notify the department of taxation." Page 8, lines 1-5. "Alternatively, the department of business, economic development, and tourism may increase the cap according to the level of demand of qualified renewable transportation fuel production; provided that the department shall report to the legislature on the rationale and justification of any such increase." Page 8, lines 7-11. (These provisions were introduced in Senate Draft 1 of the bill.) Although the Department of Business, Economic Development, and Tourism (DBEDT) has to report to the Legislature, it appears that DBEDT may increase the cap for the tax credit without any clear legislation or rules that confine DBEDT's exercise of discretion. The Department is not aware of any other tax credit with an aggregate cap that gives an executive branch agency the authority to increase the cap without authorizing legislation signed into law by the Governor. So, this provision is unusual.

It may also be an improper delegation of legislative powers as the bill is currently written. If the Legislature intends to give DBEDT authority to increase the aggregate cap on this tax credit, we recommend that the bill be amended to provide greater clarity over the circumstances under which the cap on the proposed tax credit amount may be increased. In the alternative, we recommend that the bill be amended to require the adoption of administrative rules to determine when and how the cap amount may be increased. Even then, however, this delegation of legislative authority is questionable.

We also bring to your attention that there are references to "renewable fuel" on page 10, line 21; page 11, line 20; and page 12, line 1. It appears that these may be referring to "renewable <u>transportation</u> fuel," a term which is also used in the bill. This, however, is not clear. If the term "renewable fuel" was intended to refer to "renewable <u>transportation</u> fuel," we recommend that the bill be amended to refer to "renewable <u>transportation</u> fuel" consistently throughout the bill.

We respectfully recommend that the Committee make the suggested amendments.

DEPARTMENT OF BUSINESS, ECONOMIC DEVELOPMENT & TOURISM

NEIL ABERCROMBIE
GOVERNOR

RICHARD C. LIM
DIRECTOR

MARY ALICE EVANS
DEPUTY DIRECTOR

No. 1 Capitol District Building, 250 South Hotel Street, 5th Floor, Honolulu, Hawaii 96813
Mailing Address: P.O. Box 2359, Honolulu, Hawaii 96804
Web site: www.hawaii.gov/dbedt

Telephone: (808) 586-2355
Fax: (808) 586-2377

Statement of
Mark B. Glick
Administrator, Hawaii State Energy Office
Department of Business, Economic Development, and Tourism
before the
SENATE COMMITTEE ON WAYS AND MEANS
Thursday, March 29, 2012
9:00am
State Capitol, Conference Room 211
in consideration of
HB2262, HD2, SD1
RELATING TO ENERGY.

Chair Ige, Vice Chair Kidani, and Members of the Committee.

The Department of Business, Economic Development, and Tourism (DBEDT) **supports the intent** of HB2262, HD2, SD1, which broadens the ethanol facility income tax credit to include various types of refundable fuels, including ethanol . DBEDT has concerns about administering the proposed tax credit programs given the lack of administration resources provided by this measure.

We believe these renewable transportation fuels production facility tax credits will provide a net overall economic benefit to the State, but defer to the appropriate agency on the fiscal impacts of these tax credits. We note that many biofuels projects identified in the 2011 Biofuels Feasibility Study Interim Report (Act 203, Final Report due December 2012) could be eligible for the facility tax credits proposed by HB2262 HD2, SD1, although at least one is currently under construction without the benefit of such tax credits.

Thank you for the opportunity to offer these comments.