DAVID Y. IGE
GOVERNOR

LUIS P. SALAVERIA
DIRECTOR

MARY ALICE EVANS
DEPUTY DIRECTOR

DEPARTMENT OF BUSINESS, ECONOMIC DEVELOPMENT & TOURISM

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

Thursday, March 19, 2015
8:30 a.m.
State Capitol, Conference Room 325

in consideration of
SB 349, SD2
RELATING TO TAXATION.

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

The Department of Business, Economic Development & Tourism (DBEDT) offers comments on SB 349, SD2, which would establish a renewable fuels production tax credit and repeal the ethanol facility tax credit.

DBEDT would like to point out three issues with this measure. Although no firm has yet taken advantage of the ethanol facility tax credit, there is no definitive analysis that suggests that locally produced ethanol is not feasible, thus it may be premature to repeal the facility tax credit prior to conducting such analysis. Secondly, DBEDT notes that a refundable production tax credit can provide perverse incentives from producers by potentially allowing producers to overproduce with no intent or requirement to sell while still claiming the credit for production. Finally, DBEDT is concerned that the financial and human resources (approximately $100,000 and 0.5 full-time equivalent) required to administer the duties of this bill are not included in its current budget and should not replace or adversely impact priorities indicated in the Executive Budget.

Though DBEDT defers to the Department of Taxation on its part of the administration of the tax, DBEDT requests that the committee add a definition of “taxable year” and “year” as one that starts from January 1 through December 31. Because businesses can file tax returns at any time of the year and can set their own taxable year, defining the year would simplify the administration of the bill by making it possible to calculate the annual allowable tax credit and administer the aggregate cap on the amount of allowable tax credits on a first-come, first-served basis.

DBEDT defers to the Department of Budget and Finance and Department of Taxation on the fiscal impacts of the bill. DBEDT also defers to the Attorney General on the legal aspects, especially concerning the definition of “renewable fuels,” which may be in conflict with the commerce clause of the US Constitution.

Thank you for the opportunity to offer these comments regarding SB 349, SD2.

DAVID Y. IGE
GOVERNOR

SHAN TSUTSUI
LT. GOVERNOR

MARIA E. ZIELINSKI
DIRECTOR OF TAXATION

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

Date: Thursday, March 19, 2015
Time: 8:30 A.M.
Place: Conference Room 325, State Capitol

From: Maria E. Zielinski, Director
Department of Taxation

Re: S.B. 349, S.D. 2, Relating to Taxation

The Department of Taxation (Department) appreciates the intent of S.B. 349, S.D. 2 and offers the following comments.

S.B. 349, S.D. 2 repeals the current ethanol facility tax credit and creates a refundable income tax credit for production of renewable fuels. The tax credit would provide 20 cents of credit per every 76,000 British Thermal Units of fuel produced in a taxable year. The credit applies for a five year period, beginning when a taxpayer begins qualifying renewable fuel production at the threshold rate. The credit must be certified by the Department of Business, Economic Development, and Tourism (DBEDT), and is capped at $3,000,000 per taxpayer per year, and has an aggregate cap of $12,000,000 per year. S.D. 2 has a defective effective date of July 1, 2053.

The Department generally has concerns regarding the inclusion of an aggregate cap on the total amount of tax credits. In this instance, DBEDT is required to certify the credits prior to taxpayers claiming the credit by filing with the Department; thus, the Department defers to DBEDT regarding its ability to perform this certification function.

The Department notes that the renewable fuels production tax credit provided under this measure is refundable. A refundable tax credit allows a taxpayer to receive a refund if the credit amount exceeds the tax liability. As a general matter, the Department prefers that tax credits be non-refundable due to the potential for abuse that refundable tax credits create.

Thank you for the opportunity to provide comments.

Testimony of Warren Bollmeier
Chair, Renewable Energy Working Group
Hawaii Energy Policy Forum

Before the
House Committee on Energy and Environmental Protection
Thursday, March 19, 2015 at 1:00 p.m. in Conference Room 325

IN SUPPORT OF SB349 SD2 – Relating to Renewable Fuels

Chair Lee, Vice Chair Lowen, and Members of the Committee,

I am Warren Bollmeier, Chair of the Renewable Energy Working Group of the Hawaii Energy Policy Forum (Forum). The Forum, created in 2002, is comprised of more than 40 representatives from Hawaii's electric utilities, oil and natural gas suppliers, environmental and community groups, renewable energy industry, and federal, state and local government, including representatives from the neighbor islands. Our vision and mission, and comprehensive "10 Point Action Plan" serves as a guide to move Hawaii toward its preferred energy goals and our support for this bill.

The purpose of SB349 SD2 is to replace the existing Ethanol Facility Investment Tax Credit (Section 243-3.5, Hawaii Revised Statutes) with a Renewable Fuels Production Tax Credit.

The Forum supports SB349 SD2 as it would help us meet the transportation fuels component of the Hawaii Clean Energy Initiative. Specifically, we note after having worked on various precursor versions of this bill for the past several years that this bill would:

1. Create opportunities for a broad range of facilities in <u>Hawaii</u> to produce renewable fuels and. Specifically, in addition to ethanol, the credit would be eligible for facilities that could produce liquid <u>or</u> gaseous fuels, including methanol, biodiesel, biojet, hydrogen and biogas,

2. Reward successful developers in Hawaii based on how much they <u>produce</u> and <u>not</u> how much they invest,

3. Encourage local farmers to work with developers to produce local feedstocks, and

4. Result in the creation of sustainable jobs in Hawaii and valuable contribution to Hawaii's economy.

Thus, the Forum respectfully urges its passage of SB349 SD2.

Mahalo for the opportunity to testify.

This testimony reflects the position of the Forum as a whole and not necessarily of the individual Forum members or their companies or organizations.

BIOENERGY ASSOCIATES LLC
1050 BISHOP STREET SUITE 371
HONOLULU, HI 96813

March 17, 2015

Representative Chris Lee, Chair
Representative Nicole E. Lowen, Vice Chair
And Members of the Committee on Energy and Environmental Protection
Hawaii State Capitol
415 S. Beretania
Honolulu, HI 96813

Re: SB 349 SD2 – Relating to Taxation

Dear Chair Lee, Vice Chair Lowen and Members of the Committee,

My name is William Maloney and I am the President of Bioenergy Associates LLC, and was formerly Chief Executive Officer of Pacific West Energy LLC ("PacWest"), who were active for over a decade to in attempting to develop an integrated agriculture to green power and renewable fuel project in Hawaii. I was intimately involved in the creation of the existing Ethanol Facility Investment Tax Credit. I have been in the renewable fuels business for over 30 years, and am an internationally recognized expert in renewable fuels and renewable energy, providing consulting services primarily to renewable fuels producers and traders, and petroleum companies that blend renewable fuels.

SB349 SD2 proposes to modify the Ethanol Facility Investment Tax Credit (complete repeal) and to replace it with a renewable fuels production tax credit. While I support the intent to broaden the incentive to generate new investments in renewable fuels production generally, I believe, based upon my extensive experience in the industry, and in particular with the legalities involved with the creation of the existing Ethanol Facility Tax Credit, that the approach included in SB349 SD2 is fatally flawed and therefore I submit the following comments:

1) The proposed new Renewable Fuels Production Tax Credit repeals the existing Ethanol Facility Tax Credit. As noted previously, the intent of extending the existing investment incentive to encourage new investments in biofuels is a good idea. However, the Ethanol Facility Tax Credit was enacted only after two <u>independent</u> cost-benefit analysis that required the submission of all detailed project budgets and federal and state tax implications. Both concluded that the Ethanol Facility Tax Credit would be revenue positive for the State of Hawaii. It included a cap that the level of credits should not exceed the total qualifying investment in a facility. To the best of my knowledge no such examination has been undertaken for any other biofuels including biodiesel. Such an examination for all renewable fuels is essential to good policy, and respectfully suggest that an independent cost / benefit analysis of the new proposed incentive should be undertaken. To not do so runs the risk of creating a tremendous tax loophole / subsidy to special interests that may not in fact prove to be a net positive to the State in terms of revenue and increased economic activity.

2) It should be noted that the proposed incentive of $0.20 per 76,000 Btu's of renewable fuel produced is effectively a much higher per gallon of biodiesel produced production subsidy. That may very well be the intent of the proponents of the incentive, but it may not be readily apparent.

3) The bill includes methanol as a renewable fuel. Methanol is not generally considered a renewable fuel, and its inclusion may open the door to petroleum refinery generated methanol and derivatives becoming eligible for an incentive – methanol should not be included as a qualifying renewable fuel.

4) The proposed incentive applies to facilities that are already in operation, and are not required to make any further investment to qualify for any incentive – again, this may be the intent of the proponents of the incentive, but it may not be readily apparent, and is a vast departure from the existing Ethanol Facility Tax Credit that required new investment to qualify for any incentive. Investment as a criteria for tax credit eligibility was previously deemed to be a necessity (please see #5 below).

5) As written, the legislation likely violates the US Commerce Clause even though no local feedstock provision is included as in previous year's drafts of similar legislation. Any statute that purposefully discriminates against out-of-state interests is *per se* invalid and even in the absence of proof of purposeful discrimination, the statute will be presumed invalid if the purpose of the statute is legitimate but the means or effects are discriminatory[1]. This issue arose prior to the creation of the Ethanol Facility Tax Credit, with reference being made to two specific cases of particular relevance, *Bacchus Imports Ltd. v. Dias,* and *New Energy Co. of Ind. v. Limbach* that we herein refer you to. The existing Ethanol Facility Investment Tax Credit statute was carefully written in consultation with the Hawaii Attorney General and Department of Taxation to conform to the Commerce Clause to specifically create an investment tax credit and not a production tax credit, or direct production and sale related tax credit, and also not a tax credit that creates any discrimination against out-of-state interests. SB349 SD2 as proposed clearly does, both through its production credit and local sale components of the tax credit.

   It is evident that since the adoption of the Ethanol Facility Tax Credit in 2004 there has been a loss of institutional memory regarding the issues relating to renewable fuel related incentives. The existing Ethanol Facility Investment Tax Credit is an investment incentive, and not a production incentive. The former has been deemed to pass constitutional muster, while the latter is likely <u>unconstitutional as it blatantly violates the Commerce Clause.</u> The US Supreme Court held in *New Energy Co. of Ind. v. Limbach* that an in-state biofuels production incentive establishes a commercial advantage to an in-state biofuels producer over out-of-state domestic biofuel producer and was therefore, a violation of the Commerce Clause, as any statute that purposefully discriminates against out-of-state interests is *per se* invalid. Even in the absence of proof of purposeful

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

> discrimination, the statute will be presumed invalid if the purpose of the statute is legitimate but the means or effects are discriminatory.[2]

I recommend the Committee seek the advice of the State Attorney General before proceeding to enact legislation that may be invalid, and will likely lead the State to incur costly litigation.

I suggest that an appropriate solution to the tax credit issue would be to modify the existing Ethanol Facility Investment Tax credit to be a renewable fuels facility tax credit, primarily by substituting the word renewable fuels for ethanol through the statute. The Btu related criteria for level of qualifying incentive as included in the proposed bill could substitute for the existing gallon criteria, though I suggest, as a facility, maintaining the nameplate capacity as the qualifying criteria is necessary to not convert the incentive to a questionably constitutional production incentive. These amendments would provide an investment tax credit to any renewable fuels producer, be it ethanol, biodiesel, renewable diesel, or any drop-in renewable fuel. This approach would not enact an unconstitutional production tax credit that ultimately would not serve the interests of investor's or the State.

I thank you for this opportunity to testify.

Sincerely,

By */s/ William M. Maloney*
Bioenergy Associates LLC

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

From: mailinglist@capitol.hawaii.gov
Sent: Wednesday, March 18, 2015 9:45 AM
To: EEPtestimony
Cc: michael@hawaiicleanenergyfoundation.org
Subject: *Submitted testimony for SB349 on Mar 19, 2015 08:30AM*

SB349
Submitted on: 3/18/2015
Testimony for EEP on Mar 19, 2015 08:30AM in Conference Room 325

Submitted By	Organization	Testifier Position	Present at Hearing
Michael	Hawaii Clean Energy Foundation	Support	No

Comments:

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From: mailinglist@capitol.hawaii.gov
Sent: Wednesday, March 18, 2015 9:43 AM
To: EEPtestimony
Cc: michaelsnyder@hevn.net
Subject: *Submitted testimony for SB349 on Mar 19, 2015 08:30AM*

SB349
Submitted on: 3/18/2015
Testimony for EEP on Mar 19, 2015 08:30AM in Conference Room 325

Submitted By	Organization	Testifier Position	Present at Hearing
Michael Snyder	Hawaiian Electric Vehicle Network	Support	No

Comments:

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HREA
HAWAII RENEWABLE ENERGY ALLIANCE

Directors

Jody Allione
Project Development Consultant

Joe Boivin
Hawaii Gas

Kelly King
Pacific Biodiesel

Warren S. Bollmeier II
WSB-Hawaii

TESTIMONY OF WARREN BOLLMEIER ON BEHALF OF THE HAWAII RENEWABLE ENERGY ALLIANCE BEFORE THE HOUSE COMMITTEE ON ENERGY AND ENVIRONMENTAL PROTECTION

SB 349 SD2, RELATING TO TAXATION

March 19, 2015

Chair Lee, Vice-Chair Lowen and members of the Committee I am Warren Bollmeier, testifying on behalf of the Hawaii Renewable Energy Alliance (HREA). HREA is an industry-based, nonprofit corporation in Hawaii established in 1995. Our mission is to support, through education and advocacy, the use of renewables for a sustainable, energy-efficient, environmentally-friendly, economically-sound future for Hawaii. One of our goals is to support appropriate policy changes in state and local government, the Public Utilities Commission and the electric utilities to encourage increased use of renewables in Hawaii.

The purposes of SB 349 SD2 are to: (i) establish a renewable fuels production tax credit and repeals the ethanol facility tax credit; (ii) allow qualifying taxpayers to claim a refundable income tax credit equal to 20 cents per seventy six thousand British thermal units of renewable fuel, capped at $3,000,000 per year for up to five years; (iii) cap the credit at $12,000,000 per year in aggregate; (iv) require the department of business, economic development, and tourism to certify all tax credits and submit a report regarding the production and sale of renewable fuels to the governor and legislature each year; (v) direct the department of taxation to create forms for the tax credit; and (vi) apply to taxable years beginning after December 31, 2015.

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

1) <u>Meeting Our Clean Energy</u>. This measure supports our clean energy goals by encouraging business opportunities in the production and sale of renewable fuels in Hawaii.

2) <u>Merits of a Production Tax Credit ("PTC")</u>. We believe a PTC is the best way for the state to support biofuel production in <u>Hawaii</u>. With a PTC, a "producer" gets paid when the producer <u>actually</u> produces, not when he installs his production facility. This reduces the risk to the state significantly. The PTC has other features that we find attractive:

   a) we believe the PTC will be straightforward to administer, including the qualification of biofuel facilities, and documentation of the types and amounts of biofuels produced and sold in Hawaii; and

   b) the PTC will help facilitate effective producer-ag grower relationships to grow renewable feedstocks for the production of local renewable fuels.

<u>Recommendation</u>: We recommend passing the measure out "as is."

Mahalo for this opportunity to testify.

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March 18, 2015

Testimony on Senate Bill 349, SD2, Relating to Taxation
SUPPORT

Committee on Energy and Environmental Protection
Representative Chris Lee, Chair
Representative Nicole E. Lowen, Vice Chair
Hearing March 19, 2015 at 8:30 a.m., Conference Room 325

Dear Chair Lee, Vice Chair Lowen and Committee Members,

The management, investors and 70+ employees of the Pacific Biodiesel ohana thank you for hearing Senate Bill 349, SD2 for consideration by the Committee on Energy and Environmental Protection. This bill is crucial to the expansion of the biofuels industry in Hawaii, and especially to the state's transportation renewable energy goals. We wholeheartedly support SB 349, SD2.

This bill supports the State of Hawaii's interest in becoming more energy self-sufficient, and does not add any additional burden to the state budget since it only broadens the use of funding already designated for ethanol production. The existing Ethanol Facility investment tax credit has proven ineffective after more than a decade, while SB 349 provides a pathway for the best renewable fuel technologies to develop in Hawaii. If passed, it will be one of the most important actions the Legislature can take to incentivize local renewable fuel production, support current and future local jobs as well as ensure the future energy security of our island communities.

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

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

We ask you to please pass SB349, SD2 to support the continued efforts of renewable fuel producers throughout the State of Hawaii.

Mahalo,

Kelly T. King

Kelly King
Vice President
ktk@biodiesel.com

REACH
RENEWABLE ENERGY ACTION COALITION OF HAWAII
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Testimony of ERIK KVAM
President of Renewable Energy Action Coalition of Hawaii
e-mail: Erik.Kvam@REACHawaii.org

In SUPPORT of SB 349 SD2 RELATING TO TAXATION

Before the
HOUSE COMMITTEE ON ENERGY & ENVIRONMENTAL PROTECTION

March 19, 2015 8:30 a.m.

Aloha Chair Lee, Vice-Chair Woodson and members of the Committee.

My name is Erik Kvam. I am the President 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.

REACH is in **SUPPORT** of SB 349 SD2.

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** SB 349 SD2 – creating a production tax credit of so-many cents per 76,000 BTUs of renewable fuels produced from sources indigenous to Hawaii -- to encourage the development of renewable fuel production from sources indigenous to

Hawaii, so that Hawaii has the transportation fuels it needs when imported fuels stop flowing to Hawaii.

Thank you for providing this opportunity to testify.

126 Queen Street, Suite 304 Honolulu, Hawaii 96813 Tel. 536-4587

SUBJECT: INCOME, Renewable fuels production tax credit

BILL NUMBER: SB 349, SD-2

INTRODUCED BY: Senate Committee on Ways and Means

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 taxpayers' funds being utilized to support this effort.

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

The annual dollar amount of the credit shall be 20 cents per 76,000 British thermal units (BTU) of renewable fuels using the lower heating value produced for distribution in Hawaii; provided that the production by the facility is not less than 15 billion BTUs of renewable fuels per year. Limits the amount of tax credit that may be claimed by a taxpayer to $3 million per taxable year.

Defines "credit period" and "net income tax liability." Defines "qualifying renewable fuels" as fuels produced in the state from renewable feedstocks at the production facility located in the state and the fuels produced will be sold in the state, and meet the relevant ASTM International specifications for the particular fuel or other industry specifications for liquid or gaseous fuels, including but not limited to: (1) methanol, ethanol, or other alcohols; (2) hydrogen; (3) biodiesel or renewable diesel; (4) biogas; (5) other biofuels; or (6) renewable jet fuel or renewable gasoline. Defines "renewable feedstocks" as biomass crops; agricultural residues; oil crops, including but not limited to algae, canola, jatropha, palm, soybean and sunflower; other agricultural crops; grease and waste cooking oil; food wastes; municipal solid wastes and industrial wastes; water and animal residues and wastes that can be used to generate energy.

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

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

If the amount of credits exceeds the taxpayer's income tax liability, the excess of credit over liability shall be refunded to the taxpayer.

Prior to production of any qualifying renewable fuels for the year, the taxpayer is to provide written notice of the taxpayer's intention to begin production of qualifying renewable fuels to DOTAX and DBEDT with information on the taxpayer, facility location, facility production capacity, anticipated production start date, and the taxpayer's contact information. The taxpayer shall also provide written notice to the director of taxation and the director of DBEDT within 30 days following the start of production and include the production start date and expected renewable fuel production for the next year.

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

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

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

EFFECTIVE DATE: July 1, 2053; applicable to tax years beginning after December 31, 2015

STAFF COMMENTS: The legislature by Act 289, SLH 2000, established an investment tax credit to encourage the construction of an ethanol production facility in the state. The legislature by Act 140, SLH 2004, changed the credit from an investment tax credit to a facility tax credit. This measure proposes to replace the ethanol facility tax credit with a renewable fuels production tax credit.

While 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 budding entrepreneurs.

Digested 3/17/15

Email: communications@ulupono.com

HOUSE COMMITTEE ON ENERGY & ENVIRONMENTAL PROTECTION
Thursday, March 19, 2015 — 8:30 a.m. — Room 325

Ulupono Initiative Supports SB 349 SD 2 with Amendments, Relating to Taxation

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

My name is Murray Clay and I am Managing Partner of the Ulupono Initiative, a Hawaiʻi-based impact investment company that strives to improve the quality of life for the people of Hawaiʻi by working toward solutions that create more locally grown food, increase clean, renewable energy, and waste reduction. 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 supports SB 349 SD 2, which establishes a renewable fuels production tax credit. In recent years Hawaiʻi 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.

This important bill could be made more effective in achieving Hawaiʻi's renewable energy goals with three amendments:

1. On page 2, line 16, the per taxable year limit be put to at least $6 million per taxable year, which is equivalent to 30 million gallons per year of production. It is important to note that renewable fuel facilities as large as 50 million gallons per year of capacity have been proposed for Hawaiʻi. Furthermore, ethanol imports alone, at a 10% blend with gasoline, amounted to more than 45 million gallons last year. If we want to replace a meaningful portion of imported fuels with locally produced renewable fuels, at least $6 million per taxable year is a reasonable amount that balances enough incentive for developers while minimizing cost for the State.

2. The listing of renewable feedstocks that begins on page 4, line 1 should be expanded

to include, "sugar and starch crops including but not limited to sugar cane and cassava." We understand that the phrase "other agricultural crops" could be interpreted to include sugar/starch crops used in biofuel production, but as oil crops were listed it seems prudent to list sugar & starch crops to avoid doubt. It is important to note that sugar and starch crops can be processed into ethanol today with existing technology, which means there is no technology risk for the developer.

3. On page 5, line 9, the aggregate limit should be increased to $18 million. In truth, any aggregate limit will make biofuels production facilities much more difficult to finance since the developer can never be sure his/her project will be completed in time to receive the credit – before the aggregate limit is reached. This means developers will not be able to include such benefits in their financing decisions. Nevertheless, understanding that the committee would prefer to have a limit to reduce the risk of an unexpectedly large tax credit claim, an $18 million limit seems reasonable. This would then allow up to three 30 million gallon per year facilities in Hawaiʻi if amendment #1 above was also adopted. That would be 90 million gallons per year in aggregate or about double the amount of imported ethanol. This would also allow for production facilities on more than one island – for example, one 30 million gallon per year facility on three different islands.

Furthermore, we also request that on page 2, line 8, the production tax credit remain equal to 20 cents per seventy six thousand British thermal units throughout the remaining legislative process. We feel that is a reasonable figure that would incentivize production while limiting impact to the State's budget.

We strongly believe that this bill has the potential to open the door for significant renewable energy growth in Hawaiʻi.

As Hawaiʻi'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
Managing Partner