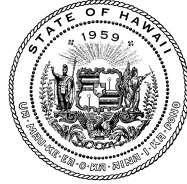


DAVID Y. IGE
GOVERNOR

SHAN TSUTSUI
LT. GOVERNOR



STATE OF HAWAII
DEPARTMENT OF TAXATION
P.O. BOX 259
HONOLULU, HAWAII 96809
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MARIA E. ZIELINSKI
DIRECTOR OF TAXATION

JOSEPH K. KIM
DEPUTY DIRECTOR

To: The Honorable Chris Lee, Chair
and Members of the House Committee on Energy and Environmental Protection

Date: February 9, 2016
Time: 8:00 A.M.
Place: Conference Room 325, State Capitol

From: Maria E. Zielinski, Director
Department of Taxation

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

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

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

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

Second, the Department notes that this tax credit is certified by the Department of Business, Economic Development, and Tourism. (DBEDT) The Department defers to DBEDT regarding its ability to make the necessary certifications, but requests that the certification provisions in this tax credit remain in this measure, as the Department is unable to make the technical judgments necessary in administering this tax credit.

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

Thank you for the opportunity to provide comments.



DEPARTMENT OF BUSINESS, ECONOMIC DEVELOPMENT & TOURISM

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GOVERNOR

LUIS P. SALAVERIA
DIRECTOR

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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

Tuesday, 9, 2016
8:00a.m.
State Capitol, Conference Room 325

in consideration of
HB 1689
RELATING TO TAXATION.

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

The Department of Business, Economic Development & Tourism (DBEDT) offers comments on HB 1689, which establishes a renewable fuels facility tax credit (TC) and repeals the ethanol facility tax credit.

DBEDT recognizes the value of the State of Hawaii in becoming more self-sufficient in its energy supply. We respectfully refer the Legislature to our state energy policy directives (<http://energy.hawaii.gov/energypolicy>) of diversifying our energy portfolio (Policy #2), and creating an efficient marketplace that benefits producers and consumers (Policy #5).

With regards to the State's Policy #2, we are concerned that this bill does not provide a clear definition of how much renewable feedstock must originate from Hawaii and be used for renewable fuel production and qualify for the full tax credit, thus negating potential diversification of our energy portfolio with indigenous resources. For example, a renewable fuel producer may use 1% Hawaii grown renewable feedstock and blend it with another 99% non-Hawaii sourced renewable feedstock and still qualify for the full tax credit under the present language of the bill. Therefore, this bill will require more clarity on the administration of the tax credit and how it will be computed, especially if a blend of renewable feedstock is allowed.

Regarding Policy #5, the bill caps the available tax credit at an aggregate total of forty million gallons per year. However, the bill does not preclude a single taxpayer of a renewable fuels facility to capture the full allocation of the credit, thus concentrating the tax credit benefit with a single individual/entity and contradicting our policy of creating an efficient marketplace.

DBEDT is also concerned about its responsibilities under this bill. First, DBEDT lacks the expertise and staffing to execute the potential verification of actual production of the renewable fuel facilities, which would be required to revise the facilities' capacity (reference lines 1-8, page 9). Second, DBEDT lacks and will require the necessary funding and budget allocation to execute the responsibilities under the Bill.

DBEDT defers to the Department of Taxation on the administration of the renewable fuels production tax credit.

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

TAX FOUNDATION OF HAWAII

126 Queen Street, Suite 304

Honolulu, Hawaii 96813 Tel. 536-4587

SUBJECT: INCOME, Renewable Fuels Facility Tax Credit

BILL NUMBER: HB 1689

INTRODUCED BY: C. LEE

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

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

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

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

a20 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 "qualifying renewable fuels production" as fuel produced or generated from renewable feedstocks. All qualifying production shall be fermented, distilled, transesterified, gasified, pyrolyzed, combusted, or produced by physical, chemical, biochemical, or thermochemical conversion methods at the facility.

Defines "qualifying renewable fuels production facility" as one located in Hawaii that produces or generates, directly from renewable feedstocks, fuel grade renewable fuels meeting the relevant ASTM International specifications for the particular fuel or other industry specifications for liquid or gaseous fuels, including but not limited to: (1) methanol, ethanol, or other alcohols; (2) hydrogen; (3) biodiesel or renewable diesel; (4) biogas; (5) other biofuels; or (6) renewable jet fuel or renewable gasoline.

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

EFFECTIVE DATE: Applies to taxable years beginning after December 31, 2015.

STAFF COMMENTS: Act 289, SLH 2000, established an investment tax credit to encourage the construction of an ethanol production facility in the state. Act 140, SLH 2004, changed the credit from an investment tax credit to a facility tax credit. This measure proposes to amend the ethanol facility tax credit to encompass facilities that produce other renewable fuels.

While the idea of providing a tax credit to encourage such activities may have been acceptable a few years ago when the economy was on a roll and advocates could point to credits like those to encourage construction and renovation activities, what lawmakers and administrators have learned in these past few years is that unbridled tax incentives, where there is no accountability or limits on how much in credits can be claimed, are irresponsible as the cost of these credits goes far beyond what was ever intended. Instead, lawmakers should consider repealing the ethanol facility credit and look for other types of alternate energy to encourage through the appropriation of a specific number of taxpayer dollars. At least lawmakers would have a better idea of what is being funded and hold the developers of these alternate forms of energy to a deliberate timetable or else lose the funds altogether. A direct appropriation would be preferable to the tax credit as it would: (1) provide some accountability for the taxpayers’ funds being utilized to support this effort; and (2) not be a blank check.

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

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

This, along with numerous other proposals targeted at certain types of business activity, is truly an indictment of what everyone has known and acknowledged since before Hawaii became a

state, that is, the climate imposed by government regulations and taxation makes it difficult to survive without some kind of subsidy such as tax credits from government. Once those subsidies disappear, so will the businesses. Instead of throwing out such breaks for special interests, lawmakers must endeavor to make Hawaii's business climate more welcoming and conducive to nurturing entrepreneurs.

Digested 2/8/2016



HOUSE COMMITTEE ON ENERGY & ENVIRONMENTAL PROTECTION

February 9, 2016, 8 A.M.

Room 325

(Testimony is 3 pages long)

TESTIMONY IN SUPPORT OF HB 1689

Aloha Chair Lee, Vice Chair Lowen, and Committee members:

The Blue Planet Foundation supports HB 1689, expanding the eligibility for biofuel production facilities beyond ethanol. This policy—providing a biofuel facility tax credit to incentivize the needed development, construction, and operation of such facilities—will provide greater support for Hawaii's diverse biofuel production infrastructure.

Biofuels will likely play a major role in Hawai'i's clean energy future—particularly as a substitute for petroleum-based transportation fuels. While much of our work has been focused on renewable energy and reducing electricity use, transportation in Hawai'i (cars, trucks, ships, and planes) accounts for approximately two-thirds of the oil consumed. **In 2014, Hawai'i cars and trucks burned nearly 500 million gallons of gasoline and diesel fuel.** For a typical car, that's enough fuel to cover the distance equivalent to over 21,000 round trips to the moon.

Transportation fuels in Hawai'i can be made from renewable resources, such as biomass in various forms, algae, and waste products. These materials are neither as scarce nor as expensive as crude oil. Even more importantly, these materials are available here. Hawai'i should set a clear course for a steady, incremental transition to renewable fuels including local and sustainable biofuels.

To promote energy security and to ensure that renewable fuels under this bill are truly sustainable for Hawai'i, **Blue Planet suggests the following amendment to Section 1 of the bill**, adding a definition for "qualifying renewable fuels":

"Qualifying renewable fuel" means a fuel created from renewable feedstocks; provided that for the purpose of the renewable fuels facility tax credit, any renewable feedstock transported more than five hundred miles using a fossil fuel can become a qualifying renewable feedstock only upon a showing to the State Energy Office, Department of Business, Economic Development & Tourism that the renewable feedstock serves a legitimate public purpose for Hawaii. For the purpose of this showing, the State

Energy Office, Department of Business, Economic Development & Tourism shall consider the impact of such fossil fuel transportation on the state's energy security and contribution to greenhouse gas emissions.

This amendment addresses the concerns expressed by the Governor regarding whether a local biofuels production tax credit might run afoul of the federal commerce clause. By utilizing the U.S. Supreme Court's standard for evaluating that issue (state initiatives that serve a "legitimate public purpose" do not run afoul of the commerce clause),¹ the proposed amendment ensures that the bill will support sustainable fuels but will not violate the U.S. Constitution.

Hawai'i's unique situation and context makes energy security a *bona fide* and legitimate local purpose. With the nearest out-of-state energy infrastructure thousands of miles away, local energy production is a direct solution for greater energy security. Hawai'i has no indigenous fossil fuels; indigenous biofuels are presently the *only available source* of secure and sustainable transportation fuels for internal combustion engines in Hawai'i. Establishing a local industry to produce feedstocks and process those feedstocks into fuels is sound policy. Local sustainable energy resources serve the purpose of energy security better than any other means, irrespective of the impact on Hawai'i taxpayers in comparison to other taxpayers.²

This is not about economic isolationism, it is about safeguarding Hawai'i's unique population and environment. Indeed, Hawai'i biofuels do not need economic protection. Biofuels are already a local success story; one of the oldest and most successful biofuel firms³ is located here, processing waste products into biodiesel fuel for Hawai'i consumers. This local industry doesn't need protection, it needs support to expand access to local feedstocks to serve a larger portion of our energy needs, thus strengthening the state's energy security.

Blue Planet also supports policy to require that a certain percentage (5% - 10%) of diesel fuel sold in Hawai'i be biodiesel. One of Hawai'i's entrepreneurial success stories is biodiesel, a fuel that can be created from recycled cooking grease and oils or grown locally, and that can be substituted in place of fossil fuel-based diesel for transportation. Already, this local industry is creating enough fuel to displace 5% of transportation diesel fuel sold in the state. The biofuels industry is also making headway on the state's use of aviation fuels; Hawaii Bioenergy has completed an agreement with Alaska airlines to power Hawai'i flights with biofuels starting as soon as 2018. Blue Planet supports a mandate to blend biodiesel with all locally sold diesel fuel.

¹ See *Maine v. Taylor*, 477 U.S. 131, 138 (1986) (quoting *Hughes v. Oklahoma*, 441 U.S. 322, 336 (1979)).

² Notably, Hawai'i's isolated island geography also makes it uniquely susceptible to environmental risks and climate change caused by emissions from imported fossil fuels and transporting imported biofuel feedstocks. Hawai'i has a "legitimate interest in guarding against [even] imperfectly understood environmental risks." *Id.* at 148. The "constitutional principles underlying the commerce clause cannot be read as requiring the State of [Hawai'i] to sit idly by and wait until potentially irreversible environmental damage has occurred" *Id.*

³ Pacific Biodiesel was founded in 1995 on Maui. One indication of this company's long success in the industry is the fact that it holds the web domain www.biodiesel.com.

This smart step will help to continue the momentum for a local industry to supply indigenous clean energy for our transportation energy needs.

Energy security through locally produced biofuels serves a “legitimate local purpose” for which there are no better solutions available today. Please advance HB 1689 to foster building Hawai‘i’s diverse biofuel production infrastructure.

Thank you for the opportunity to testify.



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Testimony of ERIK KVAM

Director of Renewable Energy Action Coalition of Hawaii

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In SUPPORT of HB 1689 RELATING TO TAXATION

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

Tuesday, February 9, 2016 8:00 a.m.

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

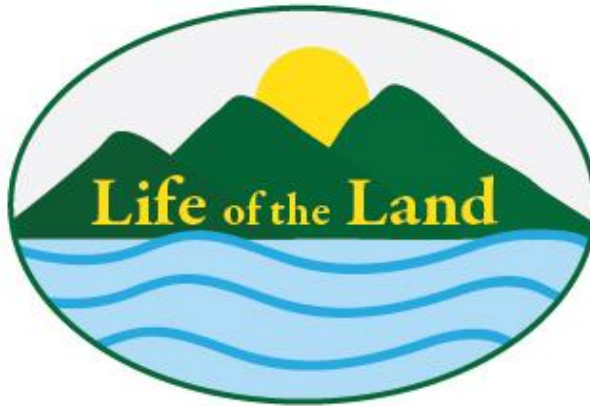
My name is Erik Kvam. I am a Director of Renewable Energy Action Coalition of Hawaii (REACH). REACH is a trade association whose vision is a Hawaiian energy economy based 100% on renewable sources indigenous to Hawaii.

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

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

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

Thank you for providing this opportunity to testify.



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COMMITTEE ON ENERGY & ENVIRONMENTAL PROTECTION

Rep. Chris Lee, Chair

Rep. Nicole E. Lowen, Vice Chair

DATE: Tuesday, February 09, 2016

TIME: 8:00 a.m.

PLACE: Conference Room 325

Re: HB 1689 Relating To Taxation

SUPPORT

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

Life of the Land is Hawai`i's own energy, environmental and community action group advocating for the people and `aina for 45 years. Our mission is to preserve and protect the life of the land through sound energy and land use policies and to promote open government through research, education, advocacy and, when necessary, litigation.

In the HECO-NextEra merger proceedings it is alleged that the 2045 Renewable Portfolio Standards mandate will require anywhere from \$6 billion to \$30 billion in infrastructure investments.

HOWEVER, an alternative scenario is that biofuels, bio-based petroleum, bio-based jet fuel and biodiesel can work in today's equipment, thus requiring no infrastructure costs. What is needed, though, is to drive down the costs of these alternatives. Unlike solar and wind which received tax breaks, and unlike ethanol tax breaks which were never used, non-ethanol biofuels and energy storage have no state tax credits. This bill seeks to remedy the biofuel tax gap.

Mahalo

Henry Curtis

Executive Director

From: mailinglist@capitol.hawaii.gov
Sent: Monday, February 08, 2016 3:53 PM
To: EEPtestimony
Cc: sharonmi@hawaii.edu
Subject: *Submitted testimony for HB1689 on Feb 9, 2016 08:00AM*

HB1689

Submitted on: 2/8/2016

Testimony for EEP on Feb 9, 2016 08:00AM in Conference Room 325

Submitted By	Organization	Testifier Position	Present at Hearing
Maria Tome	Hawaii Energy Policy Forum	Support	No

Comments:

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

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From: mailinglist@capitol.hawaii.gov
Sent: Monday, February 08, 2016 3:51 PM
To: EEPtestimony
Cc: dylanarm@hawaii.edu
Subject: *Submitted testimony for HB1689 on Feb 9, 2016 08:00AM*

LATE

HB1689

Submitted on: 2/8/2016

Testimony for EEP on Feb 9, 2016 08:00AM in Conference Room 325

Submitted By	Organization	Testifier Position	Present at Hearing
Dylan Armstrong	Individual	Support	No

Comments:

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

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