OFFICE OF INFORMATION PRACTICES

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To: Senate Committee on Ways and Means

From: Cheryl Kakazu Park, Director

Date: April 1, 2022, 10:30 a.m.
State Capitol, Conference Room 211 and Via Videoconference

Re: Testimony on H.B. No. 1809, H.D. 3, S.D. 1
Relating to Taxation

Thank you for the opportunity to submit testimony on this bill, which would establish a renewable fuels production tax credit. The Office of Information Practices (OIP) takes no position on the substance of this bill, but has **concerns about a confusing provision in the S.D. 1 version of the bill that implies the Hawaii State Energy Office has the power to exempt records from the Uniform Information Practices Act (UIPA), chapter 92F, HRS, and would require it to do so based on confusing and poorly defined standards.**

Proposed subsection 235-__(l), at page 7 line 15 to page 8 line 3, would require the Hawaii State Energy Office (Energy Office) to "exempt from disclosure" information collected under specified subsections "to the extent it would adversely affect personal privacy rights or proprietary interests." At the same time, it requires disclosure of the information to be "consistent with applicable law, including chapter 92F . . ." Thus, the provision appears to both require the Office to follow the UIPA in its disclosure of information, and to "exempt" information from disclosure based on the new and vague standard of adverse effect on "personal privacy rights or proprietary interests."

Absent specific statutory authority, an agency does not have the general power to decide to "exempt" its records from public disclosure. Rather, the UIPA sets out a uniform scheme for disclosure of government records, which includes standards for when records or information may be withheld. These standards address when information may be withheld based on individual privacy, and when information may be withheld as confidential business information whose disclosure would frustrate a legitimate government function. Agencies and the public can refer to the sizable body of court and OIP opinions interpreting the UIPA's existing exceptions, which apply to government records generally rather than being different for each specific type of record.

The current draft of this proposal would present an interpretation question as to whether the bill is intended to require (and authorize) the Energy Office to create exemptions to the UIPA or simply to apply the UIPA's existing exceptions. It would additionally raise questions as to how the bill's standard for what information may be withheld differs from the UIPA's exceptions to disclosure, and whether the bill allows a requester denied access to information to appeal the decision under the UIPA or whether withholding information is intended to be entirely within the Energy Office's discretion.

OIP notes that the H.D. 3 and earlier drafts of this bill would have required "verification and certification information" compiled under this new law to be public "[n]otwithstanding any other law to the contrary," meaning that the UIPA's exceptions would not apply. The Senate Committee on Energy, Economic Development, and Tourism replaced that provision with the current one, and its Committee Report indicates the intent was to "protect[] the confidential data within the verification and certification information, taxpayer and facility information, and renewable fuels production information[.]" If this Committee wishes to uphold that intent to not have "verification and certification information" made public without exception, and instead require the Energy Office to withhold information insofar as it qualifies as confidential, **OIP recommends that rather than creating a new and confusing standard that creates more questions than it answers, this Committee should instead amend the bill to clarify that the Energy Office must withhold information to the extent it is protected under the UIPA. Replacing subsection (l) (beginning at page 7 line 15) with the following would accomplish that:**

> **(l) To the extent information collected pursuant to this section may be withheld from public disclosure under chapter 92F, the Hawaii state energy office shall not publicly disclose the information.**

Thank you for considering OIP's testimony.

DAVID Y. IGE
GOVERNOR

JOSH GREEN M.D.
LT. GOVERNOR

ISAAC W. CHOY
DIRECTOR OF TAXATION

STATE OF HAWAII
DEPARTMENT OF TAXATION
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To: The Honorable Donovan M. Dela Cruz, Chair;
The Honorable Gilbert S.C. Keith-Agaran, Vice Chair;
and Members of the Senate Committee on Ways and Means

From: Isaac W. Choy, Director
Department of Taxation

Date: Friday, April 1, 2022
Time: 10:30 A.M.
Place: Via Video Conference, State Capitol

Re: H.B. 1809, H.D. 3, S.D. 1, Relating to Taxation

The Department of Taxation (Department) offers the following comments on H.B. 1809, H.D. 3, S.D. 1, for the committee's consideration.

H.B. 1809, H.D. 3, S.D. 1, reinstates and modifies the Renewable Fuels Production Tax Credit (RFPTC), which was previously codified at section 235-110.31, Hawaii Revised Statutes (HRS), before its duly scheduled repeal on December 31, 2021. The credit is equal to an unspecified number of cents per seventy-six thousand British thermal units of renewable fuels sold for distribution in Hawaii up to an unspecified individual cap; provided that the taxpayer's production of renewable fuels is not less than fifteen billion British thermal units of renewable fuels per calendar year. The Hawaii State Energy Office (HSEO) is responsible for certifying the credit and for administering the unspecified annual aggregate cap for all eligible taxpayers. Taxpayers must also provide written notice to the Department and to HSEO of their intention to begin production of renewable fuels prior to production of any renewable fuels in a calendar year. S.D. 1 has a defective effective date of July 1, 2100.

First, the Department notes that the House Committee on Consumer Protection & Commerce amended H.D. 1 of this measure to include the Department's suggested language to ensure that each taxpayer shall not be eligible for more than a single ten-year credit period. The Department appreciates this change and requests that it remain intact.

Second, the Department notes that the House Committee on Energy & Environmental Protection amended the original version of this measure to defect the effective date and designate HSEO as the certifying agency for this credit, rather than the Department of Business, Economic Development, and Tourism. This version also requires HSEO to certify that the renewable fuels produced have life cycle emissions substantially below that of fossil fuels. The Department defers to HSEO on its ability to certify the credit and administer the cap, but requests that this certification requirement be maintained. The Department does not have the necessary subject-matter expertise to certify this credit.

Third, the Department notes that the Senate Committee on Energy, Economic Development, and Tourism amended the measure to allow taxpayers to elect to make the credit refundable if the taxpayer agrees to a thirty percent reduction of the credit.

The Department has concerns regarding the election to make the credit refundable. The Department notes that previous versions of this bill proposed a straightforward reenactment of the prior version of the credit, but this measure was amended to provide a refundability option for each tax year of the ten-year credit period. The Department questions the need for a refundability option, as the carryover of unused portions of the credit can be used in perpetuity so that the full value of the credit will be available even as a nonrefundable credit. The Department therefore recommends the option for refundability of the credit be deleted.

Finally, if a functional effective date is to be inserted, the Department strongly suggests that this credit be made applicable to taxable years beginning after December 31, 2022. These types of credits are intended to incentivize a taxpayer's behavior; thus, providing this tax credit for tax year 2022 would provide a windfall for activity that occurred prior to the credit's enactment.

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

DAVID Y. IGE
GOVERNOR

CRAIG K. HIRAI
DIRECTOR

GLORIA CHANG
DEPUTY DIRECTOR

EMPLOYEES' RETIREMENT SYSTEM
HAWAI'I EMPLOYER-UNION HEALTH BENEFITS TRUST FUND
OFFICE OF THE PUBLIC DEFENDER

STATE OF HAWAI'I
DEPARTMENT OF BUDGET AND FINANCE
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ADMINISTRATIVE AND RESEARCH OFFICE
BUDGET, PROGRAM PLANNING AND
MANAGEMENT DIVISION
FINANCIAL ADMINISTRATION DIVISION
OFFICE OF FEDERAL AWARDS MANAGEMENT (OFAM)

WRITTEN ONLY

TESTIMONY BY CRAIG K. HIRAI
DIRECTOR, DEPARTMENT OF BUDGET AND FINANCE
TO THE SENATE COMMITTEE ON WAYS AND MEANS
ON
HOUSE BILL NO. 1809, H.D. 3, S.D. 1

April 1, 2022
10:30 a.m.
Room 211 and Videoconference

RELATING TO TAXATION

The Department of Budget and Finance (B&F) offers comments on this bill.

House Bill No. 1809, H.D. 3, S.D. 1, adds a new section to Chapter 235, HRS, to reinstate and modify the Renewable Fuels Production Tax Credit (RFPTC) that was originally repealed on December 31, 2021. For each taxpayer that produces renewable fuels, the RFPTC would be equal to an unspecified amount of cents per 76,000 British thermal units (BTU) per calendar year up to an unspecified maximum annual amount over a ten-year period, provided that the taxpayer's production of renewable fuels is not less than 15 billion BTUs per calendar year. The bill also establishes an annual aggregate cap of an unspecified amount for the RFPTC and allows for taxpayers claiming the RFPTC to receive a refund for excess credit amounts if the taxpayer agrees to reduce the eligible tax credit amount by 30%.

B&F notes that the federal American Rescue Plan (ARP) Act restricts states from using ARP Coronavirus State Fiscal Recovery Funds (CSFRF) to directly or indirectly offset a reduction in net tax revenue resulting from a change in law, regulation, or administrative interpretation beginning on March 3, 2021, through the last day of the fiscal year in which the CSFRF have been spent. If a state cuts taxes during this period, it must demonstrate how it paid for the tax cuts from sources other than the CSFRF, such as:

- By enacting policies to raise other sources of revenue;
- By cutting spending; or
- Through higher revenue due to economic growth.

If the CSFRF provided have been used to offset tax cuts, the amount used for this purpose must be repaid to the U.S. Treasury.

The U.S. Department of Treasury has issued rules governing how this restriction is to be administered. B&F will be working with the money committees of the Legislature to ensure that the State of Hawai‘i complies with this ARP restriction.

Thank you for your consideration of our comments.

HAWAII STATE ENERGY OFFICE
STATE OF HAWAII

DAVID Y. IGE
GOVERNOR

SCOTT J. GLENN
CHIEF ENERGY OFFICER

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Testimony of
SCOTT J. GLENN, Chief Energy Officer

before the
SENATE COMMITTEE ON WAYS AND MEANS

Friday, April 1, 2022
10:30 AM
State Capitol, Conference Room 211 & Videoconference

COMMENTS
HB 1809, HD3, SD1
RELATING TO TAXATION

Chair Dela Cruz, Vice Chair Keith-Agaran, and Members of the Committee, the Hawaiʻi State Energy Office (HSEO) offers comments while supporting the intent of HB 1809, HD3, SD1, which establishes a renewable fuels production tax credit. HSEO's comments are specific to the implementation of the tax credit verification and certification process.

Renewable fuels provide local jobs and economic benefits in energy and agriculture, while contributing to Hawaiʻi's economic diversification and the potential for greater production of food, cosmetics, and other value-added products. HSEO managed the certification of the previous renewable fuels production tax credit.[1]

Although HB 1809, HD3, SD1, is similar to SB2478, SD2, passed by this committee on March 15, there are important differences. SB 2478, SD2 was structured similarly to the previous credit in its final form, and importantly included provisions for the taxpayer to provide an independent third-party certified statement,

[1] The renewable fuels production tax credit, HRS 235-110.31, effective for the five year period between January 1, 2017 and December 31, as established by Act 202, Session Laws of Hawaii (SLH) 2016, amended by Act 142, SLH 2017, and further amended by Act 143, SLH 2018.

established deadlines for steps in the certification process, and established an approach in the case of the cap being exceeded in any given year. HSEO recommends including these provisions because they are important to a successful verification and certification process.

HSEO recommends re-wording paragraph (g), starting on page 5, line 9, to add a requirement and timeline for the taxpayer to provide information necessary for the verification of the fuel production claim, in a manner similar to previous requirements:

> (g) Not later than thirty days following the close of each calendar year during the credit period, the taxpayer claiming a credit under this section shall complete and file an independent, third-party certified statement, at the taxpayer's sole expense, with the chief energy officer of the Hawaii state energy office. The statement shall be in the form prescribed by the chief energy officer of the Hawaii state energy office and shall include the following information:
>
> (1) For each type of qualified fuel claimed:
>
> (A) The type of fuel produced;
>
> (B) The volume of fuel produced;
>
> (C) The volume of fuel sold;
>
> (D) The lower heating value of the fuel in British thermal units using the lower heating value of fuel produced and sold during the previous calendar year;
>
> (E) The feedstock used;
>
> (F) The lifecycle greenhouse gas emissions of the fuel produced and sold; and
>
> (G) The lifecycle greenhouse gas emissions of the fossil fuel displaced by the qualified fuel.
>
> (2) The dollar amount of renewable fuel production credit claimed by the taxpayer for qualified fuel produced and sold during the calendar year, not to exceed the amount per taxpayer established in paragraph (a).

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        (3)  The cumulative amount of renewable
             fuels production tax credits received
             by the taxpayer during prior years
             during the credit period.
        (4)  The number of employees of the facility
             and each employee's state of residency.
        (5)  The projected number of British thermal
             units of renewable fuels production for
             the succeeding year.
        (6)  Whether a renewable fuels production
             tax credit is anticipated to be claimed
             in the succeeding year.
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HSEO also recommends re-wording paragraph (b), starting on page 2, line 7, to establish a timeline for the review of the information provided, so that if the claim is timely, complete, and accurate, the taxpayer may receive the certificate to file with the taxpayer's tax return:

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        (b)  Within thirty calendar days after the
   due date of the statements required under
   subsection (g), the Hawaii state energy office
   shall:
        (1)  Acknowledge receipt of the statements
             in writing;
        (2)  Total all renewable fuels production
             that the Hawaii state energy office
             certifies as eligible for the tax
             credit for the calendar year;
        (3)  In the event that the verified credit
             claims under this section exceed $_____
             for all eligible taxpayers in any given
             calendar year, the $_____ shall be
             divided between all eligible taxpayers
             for that year in proportion to the
             lower heating value of renewable fuels
             produced by all eligible taxpayers.
             Upon reaching $_____ in the aggregate,
             the Hawaii state energy office shall
             immediately notify the department of
             taxation.  In no instance shall the
             total dollar amount of certificates
             issued exceed $_____ per year;
        (4)  Issue a certificate to the taxpayer
             verifying the amount of renewable fuels
```

produced and sold, the credit amount certified for each taxable year, and the cumulative amount of the tax credit during the credit period. The taxpayer shall file the certificate with the taxpayer's tax return with the department of taxation.

(5) Notwithstanding the Hawaii state energy office's certification authority under this section, the director of taxation may audit and adjust the certification to conform to the facts.

(6) Notwithstanding any other law to the contrary, the verification and certification information compiled by the Hawaii state energy office shall be available for public inspection and dissemination under chapter 92F.

HB 1809, HB3, SD1 also includes a new requirement (page 2, lines 17-19) for HSEO to certify every five years that that the renewable fuels produced have “life cycle emissions substantially below that of fossil fuels.” The type of emissions to be included is not defined in HB1809, HB3, SD1. HSEO’s proposed revision to paragraph (g)(1)(F) and (G) specifies greenhouse gas emissions, the current language on page 2, lines 17-19, is not specific to greenhouse gas emissions and the definitions section starting on page 8 does not include “life cycle emissions.” Clarifying the types of emissions to be included, and ensuring that the taxpayer provides life cycle information on those same emissions, will be important to successfully completing the required reporting.

Also, HSEO would need to be appropriately resourced to perform certifications. As a consequence of recent drastic budget reductions to personnel, HSEO adjusted the prioritization of staff responsibilities following the sunset of the tax credit on December 31, 2021. HB 1600, HD1 provides a position and funds for an Energy Economics Specialist in HSEO to serve as subject matter expert on energy economics and financing of energy systems. The position would identify market gaps and innovation opportunities, collaborate with stakeholders, and facilitate public-private partnerships to develop projects, programs, and tools to encourage private and public exploration, research, and development of energy resources, distributed energy resources, and data analytics that will support the State's energy and decarbonization goals; evaluate, recommend, and participate in the development of incentives and programs that encourage resource development; and to assess and evaluate the effectiveness and continued necessity of existing energy related incentives, tax credits, and programs, and provide recommendations and proposed changes. This position would enable HSEO to perform the necessary certifications should that budget become adopted into law.

HSEO defers to the appropriate agencies on matters relating to tax administration and budget concerns.

Thank you for the opportunity to testify.

THE CIVIL BEAT
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Senate Committee on Ways and Means
Honorable Donovan M. Dela Cruz, Chair
Honorable Gilbert S.C. Keith-Agaran, Vice Chair

RE: Testimony Commenting on H.B. 1809 H.D. 3 S.D. 1, Relating to Taxation
Hearing: April 1, 2022 at 10:30 a.m.

Dear Chair and Members of the Committee:

My name is Brian Black. I am the Executive Director of the Civil Beat Law Center for the Public Interest, a nonprofit organization whose primary mission concerns solutions that promote governmental transparency. Thank you for the opportunity to submit testimony **commenting on the scope of confidentiality in H.B. 1809 H.D. 3 S.D. 1.**

This bill will provide a substantial tax credit to producers of renewable fuels. The Law Center takes no position on that aspect of the bill.

Because these producers will receive significant tax benefits that reduce the public fisc, a measure of transparency is necessary. Please do not accept any proposed amendments that would effectively render all information collected by the Hawai`i State Energy Office confidential. Specifically, **do not follow the standard of excessive secrecy adopted by the House in the companion bill S.B. 2478 H.D. 1**.

The current confidentiality standard—while not as robust disclosure as the bill originally introduced—walks a line that balances the public's interest in disclosure with the producers' legitimate business concerns. The identity of the businesses that receive this tax benefit, the amount of the benefit received (and thus corresponding cost to the taxpayers), and some measure of the public benefit should be publicly disclosed at a minimum so that the public can understand and scrutinize the cost of this tax credit.

To the extent that there is specific information that should without question be publicly accessible, we would encourage the Committee to make that clear in the bill. For example, it will avoid future litigation over whether the amount of the tax credit received is "proprietary" information if the Committee identifies such obviously public information as accessible in the statute. Our government should be *required* to disclose—and business should accept disclosure of—certain information about this tax credit if a business wants the substantial benefit of public monies.

Thank you again for the opportunity to testify **comment on the scope of confidentiality** in H.B. 1809 H.D. 3 S.D. 1.

PACIFIC BIODIESEL TECHNOLOGIES

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Decision Making Friday April 1, 2022

IN STRONG SUPPORT OF HB1809 HD3 SD1

Committee on Ways and Means

Chair Dela Cruz and Committee:

Pacific Biodiesel is in support of HB1809 as written, with credit amounts to be determined later.

Continuing this credit sends the correct signal for new investments in this area.

Mahalo,

Robert King, President
Pacific Biodiesel Technologies, LLC

Testimony to
The Committee on Ways and Means

Friday, April 1, 2022
10:30 AM
VIA Video Conference
Conference Room 211, Hawaii State Capitol

HB 1809 HD3 SD1

Chair Dela Cruz, Vice Chair Keith-Agaran, and members of the committee,

Hawaii Gas **supports** **HB 1809 HD3 SD1,** which establishes a renewable fuels production tax credit with recommended amendments.

Hawaii Gas is a national leader in the production and distribution of renewable gas in a gas utility system and has committed to support the state's march towards carbon neutrality by 2045. Despite representing less than 1% of the greenhouse gases emitted into Hawaii's atmosphere, we agree that it's everyone's responsibility to do everything we can to make sure Hawaii meets that milestone.

Renewable feedstocks are key components to creating renewable natural gas, hydrogen, and other renewable biofuels, all of which are important fuel replacements for fossil fuels.

Tax incentives have proven to be an effective tool in encouraging the development of innovative new technologies, just as seen in the burgeoning solar and wind industry decades ago. These incentives also provide a method for ratepayers to be provided lower costs for new technologies that have not had time to mature and scale. Hawaii recognized the impact of this concept when it created a production tax credit six years ago, which unfortunately sunset on December 31, 2021. It was during this time that Hawaii Gas developed a unique project in partnership with the City and County of Honolulu to take gas emissions from the wastewater treatment process, which were previously being released into the atmosphere, and capture it to create renewable natural gas. This project was equivalent to taking up to 400 cars off the road every year. This project was among the first in the country to inject that gas into the pipeline.

Establishing this credit will be pivotal to generate more of these innovative clean energy alternatives.

We ask the committee to consider the following amendments to the bill.
Page 2 lines 17-19 Delete

We would like to call attention to the fact that life cycle greenhouse gas emission analysis (LCA GHG) of a project (including the fuel supply) and the effect of the State's reliance on fossil fuels is mandated by statute to be part of the Public Utilities Commission decision making process. The LCA GHG analysis, impact of this analysis, and the resulting decision and order by the Commission is a matter of public record.

To include a certification of LCA GHG is laudible, however, requiring the Hawaii State Energy Office to <u>recertify</u> this is <u>redundant and superfluous, potentially resulting in higher prices for ratepayers as well as a chilling impact on producers' investments.</u>

Due to the redundancy, we respectfully request consideration of this committee to delete Subsection (b) (4).

<u>(b) The Hawaii state energy office shall:</u>

~~(4) Every five years certify that the renewable fuels produced have life cycle emissions substantially below that of fossil fuels.~~

In addition, we ask the committee to strengthen the data privacy language .

The information disclosure will leave Hawaii defenseless to nefarious intent, and vulnerable to endangerment of energy and national security. The language should be clear in statute that protects the public, the utility and the producer.

The information to be collected and compiled by the Hawaii State Energy Office is highly confidential, commercial proprietary competitive information that should not be made public as it would harm competition and deter competitive producers from entering this market, which would ultimately be harmful to consumers and would not be in the public interest.

We ask the committee to consider these security risks and concerns and consider the following amendments:

Page 6, line 11

(1) The ~~number, location, and~~ <u>aggregate number</u> ~~production~~ of renewable fuels production facilities in the State and

outside the State that have claimed a credit under this section;

Page 7, delete lines 15 through 21, page 8, lines 1- 3, and insert the amended language requested here:

(l) ~~The Hawaii state energy office shall exempt from disclosure any information collected pursuant to subsections (b), (e), and (f) to the extent it would adversely affect personal privacy rights or proprietary interests. Any disclosure of the information collected pursuant to subsections (b), (e), and (f) for public inspection and dissemination shall be consistent with the policies, procedures, and standards developed by the chief information officer and consistent with applicable law, including chapter 92F and other state and federal laws related to security and privacy.~~

Notwithstanding any other provision in this section or any other law to the contrary, the information collected and compiled by the Hawaii state energy office under this section for the purposes of the renewable fuels production tax credit shall be kept confidential; provided that the Hawaii state energy office may make such information that is aggregated to prevent identification of a provider with the specific data furnished by that provider, available for public inspection and dissemination subject to chapter 92F and any applicable exceptions under section 94F-13; provided further that The Hawaii state energy office shall (1) be prohibited from:

(A) Using the information furnished or obtained for any purpose other than the purposes for which it is supplied; and

(B) Making any publication whereby the data furnished by any person can be identified;

(2) Ensure the security and confidentiality of the information;

(3) Protect against any anticipated threats or hazards to the security or integrity of the information; and

(4) Protect against unauthorized access to or use of the information that could result in personal or competitive harm to individuals or providers.

We appreciate the benefits this legislation will bring to allow Hawaii to benefit from affordable energy while sustaining our reliability and resiliency, so critical to Hawaii's infrastructure especially in times of natural disasters.

We respectfully request the committee to pass HB 1809 HD3 SD1 with these amendments.

Thank you for the opportunity to testify.

SUBJECT: INCOME, Create Renewable Fuels Production Credit

BILL NUMBER: HB 1809 SD 1

INTRODUCED BY: Senate Committee on Energy, Economic Development, and Tourism

EXECUTIVE SUMMARY: Establishes a renewable fuels production tax credit. Our view is that a direct appropriation to buy or subsidize energy production would be far superior because (1) we know how much we are spending and (2) we know what we are buying.

SYNOPSIS: Adds a new section to HRS chapter 235 to establish a nonrefundable 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 ten years beginning from the first taxable year in which a taxpayer begins renewable fuels production at a level of at least 76,000 British thermal units (BTU) of renewable fuels per calendar year.

Provides that each taxpayer, together with all of its related entities (as determined under Internal Revenue Code section 267(b)) and all business entities under common control (as determined under Internal Revenue Code sections 414(b), 414(c), and 1563(a)), shall not be eligible for more than a single ten-year credit period.

The annual dollar amount of the credit shall be ____ (20 cents in HB 1809 HD 2) per 76,000 BTUs of renewable fuels using the lower heating value sold for distribution in Hawaii; provided that the taxpayer's production of renewable fuels 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 in HD 2) per taxable year.

Defines "renewable fuels" as fuels produced from renewable feedstocks provided that the fuels shall be sold as a fuel, and meet the relevant ASTM International specifications for the particular fuel or other industry specifications, including but not limited to: (1) methanol, ethanol, or other alcohols; (2) hydrogen; (3) biodiesel or renewable diesel; (4) biogas; (5) other biofuels; (6) bioenergy; or (7) 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, including wastewater; and (10) animal residues and wastes that can be used to generate energy.

Requires the Hawaii state energy office (in 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 $3 in the aggregate, DBEDT shall 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 may be used as a credit against the taxpayer's income tax liability in subsequent years until exhausted. All claims for a credit under this section shall be properly filed on or before the end of the twelfth month following the close of the taxable year for which the credit may be claimed. Failure to comply with the foregoing provision shall constitute a waiver of the right to claim the credit.

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 Hawaii state energy office 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 chief energy officer 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 chief energy officer of the Hawaii state energy office on the number of BTU 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 BTU of renewable fuels production for the succeeding year.

In the case of a partnership, S corporation, estate, or trust, distribution and share of the tax credit for renewable fuels production shall be determined pursuant to section 704(b) (with respect to partner's distributive share) of the Internal Revenue Code.

Directs the chief energy officer of the Hawaii state energy office, 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. The report shall include the number, location, and production of renewable fuels production facilities in the State and outside the State that have claimed a credit under this section; the total number of British thermal units of renewable fuels, broken down by type of fuel, produced and sold during the previous year; and the projected number of BTU of renewable fuels production for the succeeding year.

Requires DOTAX to prepare the necessary forms to claim the credit, and DOTAX may require the taxpayer to furnish information to validate a claim for the credit, and may adopt rules necessary to effectuate the purpose of the law pursuant to chapter 91.

EFFECTIVE DATE: July 1, 2100.

STAFF COMMENTS: Act 202, SLH 2016, enacted a renewable energy credit with a five-year life. The credit sunset on December 31, 2021. This bill revives the credit with some modifications. First, the bill allows for a 10-year credit period where Act 202 provided for a five-year credit period. Second, the bill allows for an annual cap of $6 million, where Act 202 provided for a cap of $3 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.

Digested: 3/30/2022

April 1, 2022

TESTIMONY SUPPORTING THE INTENT OF HB 1809 HD 3 SD 1
RELATING TO TAXATION

Senate Committee on Ways and Means
The Honorable Donovan M. Dela Cruz, Chair
The Honorable Gilbert S.C. Keith-Agaran, Vice Chair

Friday, April 1, 2022
10:30 A.M.
Conference Room 211 & Videoconference

Chair Dela Cruz, Vice Chair Keith-Agaran and members of the Committee,

Thank you for the opportunity to submit written testimony supporting the intent of HB 1809 HD 3 SD 1, Relating to Taxation. My name is Eric Wright, President at Par Hawaii and am responsible for the safe operations of our refinery in Kapolei and energy assurance for our state.

Par Hawaii operates the only refinery in the State of Hawaii. Currently, more than 80% of the energy needs of the state are dependent upon petroleum products. This is a responsibility the Par Hawaii team takes very seriously. As the state transitions to more renewable energy sources, Par Hawaii will continue to evolve to meet the energy needs of the state.

Renewable fuels provide local jobs and economic benefits in energy and agriculture, while contributing to Hawai‘i's economic diversification and the potential for greater production of value-added products. Reinstating this credit will be pivotal to generate more of these innovative clean energy alternatives. Projects require a significant amount of investment and may not produce an income tax liability for several of those years.

Tax credits have proven essential in building momentum and scale in the development and distribution of diverse renewable fuel sources. Grid stability is essential to resiliency, and it's clear that Hawaii's grid depends on a variety of sources – including solar, wind, and other fuels – to deliver that stability to ratepayers. These tax credits provide incentives for the production of a diverse renewable fuel supply, which in turn brings more renewable energy and fuel options to our grid.

Mahalo for allowing Par Hawaii to share our perspectives in support of HB 1809, HD 3 SD 1.

HAWAII CLEAN POWER ALLIANCE

Testimony to the Committee on Energy, Economic Development and Tourism

Friday, April 1, 2022
10:30 AM
Conference Room 211 & Video Conference
Hawaii State Capitol

HB 1809 HD3 SD1

Chair Dela Cruz, Vice Chair Keith-Agaran, and members of the committee,

Hawaii Clean Power Alliance (HCPA) **supports with amendments** HB 1809 HD3 SD1, which establishes a renewable fuels production tax credit.

Hawaii Clean Power Alliance is a nonprofit alliance organized to advance and sustain the development of clean energy in Hawaii. Our goal is to support the state's policy goal of 100 percent renewable energy by 2045. We advocate for utility-scale renewable energy, which is critical to meeting the state's clean energy and carbon reduction goals.

Tax credits have proven essential in building momentum and scale in the development and distribution of diverse renewable fuel sources. Grid stability is essential to resiliency, and it's clear that Hawaii's grid depends on a variety of sources – including solar, wind, and other fuels – to deliver that stability to ratepayers. These tax credits provide incentives for the production of a diverse renewable fuel supply, which in turn brings more renewable energy and fuel options to our grid.

These types of renewable fuels, such as hydrogen, can be used to transform the electric grid into zero emissions grid and power zero emissions vehicles. This type of fuel is innovative but also costly. The recently passed Federal Infrastructure Legislation recognizes the importance of grid resiliency as well as hydrogen. Hawaii is known for its clean energy initiatives and this bill can attract many developers to the islands to showcase industry leadership. Renewable fuels can spur innovation, economic development and many well-paying jobs.

The bill calls for life cycle emissions certification and reporting by the Hawaii State Energy Office, which is redundant to the Public Utility Commission mandate to analyze life cycle emission projects, including renewable fuels.

1) Therefore, we recommend that these redundant certification and reporting requirements be removed from the bill. (Page 2, delete lines 17-19.)

2) We also ask the committee to consider inserting amendments that strengthen the confidential and proprietary information, since disclosure of unaggregated data could be used to threaten national energy security [1] and would create privacy concerns regarding the release of any individual project location and production information.

The Federal Energy Regulatory Commission (FERC), is an independent agency that regulates the interstate transmission of natural gas, oil, and electricity. Although Hawaii is not subject to interstate transmission regulation, the regulations governed by FERC prohibit disclosure of information of Critical Energy Electric Infrastructure (CEII), and that concept should be applied to Hawaii's critical infrastructure. Site specific public disclosure requirements by HSEO of the details on the production of renewable fuels such as location, amounts of fuel production, types and sources of feedstock and number of employees working on the fuel production creates a risk to Hawaii's energy security. This is information that is considered sensitive and CEII by FERC. A critical evaluation is necessary to maintain the security of Hawaii's energy systems, taking into consideration what aspects of CEII could be adapted to Hawaii's specific needs.

Thank you for the opportunity to testify.

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[1] For reference CEII is defined by FERC as follows:

> *"CEII is defined as information related to or proposed to critical electric infrastructure,*
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> - *generated by or provided to the Commission or other Federal agency other than classified national security information,*
> - *that is designated as critical electric infrastructure information by the Commission or the Secretary of the Department of Energy pursuant to section 215A(d) of the Federal Power Act.*
>
> *CEII is specific engineering, vulnerability, or detailed design information about proposed or existing critical infrastructure (physical or virtual) that:*
>
> 1. *Relates details about the production, generation, transmission, or distribution of energy;*
> 2. *Could be useful to a person planning an attack on critical infrastructure;*
> 3. *Is exempt from mandatory disclosure under the Freedom of Information Act; and*
> 4. *Gives strategic information beyond the location of the critical infrastructure.*
>
> *Critical energy/electric infrastructure means a system or asset of the bulk-power system, (physical or virtual) the incapacity or destruction of which would negatively affect:*
>
> - *national security,*
> - *economic security,*
> - *public health or safety, or*
> - *any combination of such matters."*

LATE

April 1, 2022

Hawaii Senate
Senate Committee on Ways and Means
Hawaii State Capitol
415 South Beretania St.
Honolulu, HI 96813

RE: Hawaii House Bill 1809 HD3 SD1 – Renewable fuels production tax credit

Dear Chair Dela Cruz, Vice Chair Keith-Agaran, and Members of the Committee:

The Pet Food Institute (PFI) appreciates the opportunity to provide comments regarding HB 1809 HD3 SD1.

Established in 1958, PFI is the trade association and the voice of U.S. cat and dog food and treat manufacturers. Our members account for the vast majority of pet food and treats made in the United States and feed 180 million pets in U.S. households. Our members operate under regulations issued by the U.S. Food and Drug Administration and enforced by both federal and state officials. This means dog and cat owners throughout the United States and around the world benefit from science-based regulations that provide the safest animal food supply available globally.

PFI recognizes and supports responsible efforts to address climate change and utilize additional energy sources that reduce carbon emissions. However, we have serious concerns that government incentives and mandates promoting renewable fuel growth have created unintended consequences in supply and demand for animal- and plant-based oils and fats.

Renewable fuel tax credits and mandates for biodiesel create an unfair government-driven market advantage to the energy sector and a disadvantage to companies purchasing ingredients for pet food. Tax credits that favor fuel production over food production create market distortions, producing one problem in a heavy-handed attempt to address another. While other industries reap tax credits for their commodities' use in renewable fuel, the feed industry bears the brunt of this disadvantaged domestic supply, facing significant burdens of cost and sourcing for these critical ingredients. Our members have seen notable input price increases we believe are attributable in large part to the competition for grains by both food and fuel producers.

Renewable fuel demand, particularly renewable diesel, has spiked the price for animal- and plant-based oils and fats to two times their current market value, thus drastically increasing the cost of critical ingredients that pet food makers source for the nutrition and palatability of cat and dog food. Pet food makers rely on the essential fatty acids, found in oils and fat, to formulate foods that deliver nutrients that perform key functions in dog and cat immune and visual systems, as well as supporting a healthy skin and coat. Our members' commitment to long and healthy lives for pets means that they rely on access to dozens of animal- and plant-based oil and fat ingredients. This access is threatened by increased competition for animal protein by-products, grains and grain by-products as a result of tax incentives and mandates.

PFI's members report facing an unprecedented increase in the price of plant-origin ingredients, such as soybean oil, that we believe is attributable to the competition for grains from renewable fuel producers. Our members also reported dwindling access to these ingredients in 2021. While the U.S. historically was able to meet domestic soybean oil needs, our country alarmingly became a net importer of soybean oil in September and October of 2021, and food makers have been forced to import foreign soybean oil, which is more expensive due to heavy tariffs.

Left unchecked, these incentives and drivers for growth of demand for renewable fuels will continue to distort markets for food inputs, effectively making these critical pet food inputs inaccessible for many pet food makers and forcing companies to develop product formulations primarily based more on ingredient access than on ideal complete and balanced formulation considerations.

Now more than ever, it is important to people in the U.S. and around the world to find comfort and companionship with their pets. The human-animal bond is the documented occurrence of a positive connection established between you and your pet, that benefits both of you. In addition to providing companionship, numerous studies have documented the positive effects of the human-animal bond, which provides profound mental, social and physical health benefits for both owners and their companion animals. For example, studies indicate that sharing your life with a dog or cat can help reduce blood pressure and reduce levels of stress, and data indicate that animals can play a role in managing depression.

The last two years have been very challenging, and 2022 will continue to present significant sourcing challenges for pet food makers. Now is not the time to favor the energy sector and disadvantage the feed industry by increasing ingredient costs, risking supply shortages, and adding another layer of stress to pet food makers, pet parents and the pets they love. **PFI respectfully requests that the committee reject tax incentives for biodiesel fuels that use or include animal- and plant-based oils and fats that are historically used in human and pet food.**

On behalf of PFI members, whose nearly 25,000 employees in 32 states provide safe food for the 180 million pets across the U.S., we thank you for the opportunity to share our views.

Sincerely,

Savonne Caughey

Savonne Caughey
Senior Director of Advocacy and Government Relations
Pet Food Institute

LATE

HB-1809-SD-1
Submitted on: 3/31/2022 2:34:08 PM
Testimony for WAM on 4/1/2022 10:30:00 AM

Submitted By	Organization	Testifier Position	Testify
Gene Harrington	Testifying for Biotechnology Innovation Organization	Support	Written Testimony Only

Comments:

BIO is the world's largest trade association representing biotechnology companies, academic institutions, state biotechnology centers and related organizations across the United States and in more than 30 other nations. Our key areas of focus are health biotechnology, industrial and environmental biotechnology, and food and agriculture biotechnology. We are in strong support of HB 1809 and appreciate Hawaii's commitment to renewable energy.

HB-1809-SD-1
Submitted on: 3/30/2022 10:35:56 PM
Testimony for WAM on 4/1/2022 10:30:00 AM

Submitted By	Organization	Testifier Position	Testify
Paul Bernstein	Individual	Comments	Written Testimony Only

Comments:

Aloha Chair Dela Cruz, Vice Chair Keith-Agaran, and members of the WAM committee:

I'm writing to express my concerns about HB1809. The intention of HB1809 to support biofuels that have substantially lower lifecycle emissions than fossil fuels is good, but a tax on fossil fuels is a more economically efficient and effective instrument. A tax would create the same incentive for using biofuels, and it would not require any government expenditures. In addition, the tax would directly address emissions from fossil fuels. To protect low- and middle-income households, the tax revenue could be returned to households. Furthermore, subsidies have the problem of free ridership in that the government pays entities to do something that they would've done even without the subsidy.

If, however, this bill goes forward, I recommend that the "substantially" be defined in the clause: "Every five years, certify that the renewable fuels produced have life cycle emissions substantially below that of fossil fuels." In particular, I recommend that these fuels be at least 50% below than of fossil fuels so that significant emission reductions would be achieved.

Respectfully,

Paul Bernstein

LATE

HB 1809 HD 3 SD 1 TESTIMONY

To: Senate Committee on Ways and Means
Hearing on April 2, 2022 at 10:30 a.m.

From: John Kawamoto

Position: Oppose

Most climate scientists say that, based on recent data, we are doing far too little to mitigate climate change. Many young people fear the future because the current trend of relentlessly increasing concentration of carbon dioxide in the atmosphere will increasingly warm the Earth, leading to a global climate catastrophe. Drastic action must be taken to avert a global climate catastrophe.

Preliminary steps have been taken. Last year the Legislature recognized the urgency that is needed to address climate change by adopting SCR 44, which declares a climate emergency. The State Legislature has established clean, renewable energy goals. HRS 225P-5 sets a statewide target of net zero emissions by 2045. HRS 269-92 requires the net electricity sales of electric utility companies to be 100% renewable by 2045.

The State must take decisive action to transition of our economy to a clean, renewable energy future, and do it as quickly and directly as possible. This bill falls short.

This bill encourages renewable energy, but not clean, renewable energy. Renewable energy includes solar and wind, which are clean. But renewable energy also includes dirty energy, such as the burning of trees, which adds carbon dioxide to the atmosphere. When carbon dioxide is added to the atmosphere, it stays there for 300 to 1,000 years, according to NASA. During that time it is warming the Earth.

Promoting all types of renewable energy may have been appropriate decades ago. However, due to the climate emergency, it is now obsolete. The State should be promoting clean, renewable energy.

This bill diverts our state away from a path to a clean, renewable energy future. The thinking behind this bill makes our planet less livable for our children, their children, and many generations to come.